[PART 1 IS TO BE DELETED]

PART 1

[BANKING BOARD: SELECTION OF CANDIDATES WITH BANKING EXPERIENCE

(Statutory authority: Banking Law, § 13 (3))

Sec.
1.1 Nomination procedure
1.2 Approval of Governor

§ 1.1 Nomination procedure

The following procedure shall be followed in connection with the selection of candidates for consideration by the Governor in filling vacancies occurring in the offices of the members of the Banking Board required to have banking experience:

(a) At least 30 days prior to the expiration of the term of any member of the Banking Board required to have banking experience, and within 60 days after a vacancy has occurred, for any reason other than expiration of term, in the office of any member of the Banking Board required to have banking experience, the [superintendent] Superintendent shall forward a ballot to each institution entitled to nominate a candidate to fill the impending or existing vacancy in the Banking Board, namely those institutions in the group within which, under Banking Law, section 13(2), a candidate must have gained his banking experience. Upon the expiration of a period prescribed by the [superintendent] Superintendent not in excess of 45 days from the date of the mailing of such ballots, the [superintendent] Superintendent shall count the ballots received and shall list the persons nominated and the number of votes cast for each. The person or, in the case of a tie vote, the persons receiving the highest number of votes shall be deemed to have received first place in the balloting and the person or, in the case of a tie vote, the persons receiving the second highest number of votes shall be deemed to have received second place in the balloting. In the event that all of the votes cast are received by one person or by two persons, then the name of such person or the names of such persons shall be submitted forthwith to the Governor, with the number of votes cast for each. In the event that all of such votes are received by three or more persons, then

(1) If a majority of such votes is received by one person, the name of such person, together with the name or names of the person or persons receiving second place in the balloting shall be submitted forthwith to the Governor, with the number of votes cast for each.

(2) If a majority of such votes is not received by any one person, then

(i) if two or more persons shall have received first place in the balloting, the names of such persons, or

(ii) if only one person shall have received first place in the balloting, the name of such person and the name or names of the person or persons receiving second place in the balloting shall be submitted by the [superintendent] Superintendent to each institution entitled to nominate a candidate to fill the vacancy, with the request that each such institution indicate its choice, within a period specified by the [superintendent] Superintendent not in excess of 45 days from the mailing of the ballot. Upon the expiration of the specified period after the mailing of such ballot, the [superintendent] Superintendent shall count the ballots received and submit to the Governor the names of the persons so voted upon and inform him as to the number of votes cast for each;

(b) In submitting to the Governor the names of candidates nominated for his consideration, the [superintendent] Superintendent shall indicate the number of votes cast for each candidate by corporations shown by the records of the Banking Department to be controlled through stock ownership by the same individual or corporation;

(c) Ballots not received by the superintendent from such institutions within the specified period after the mailing thereof shall be disregarded;

(d) No such institution shall nominate more than one person for any vacancy and if such institution be a corporation, its ballot shall be accompanied by a certificate of the secretary of the corporation that the person casting such ballot has been duly authorized so to do by the board of directors of such institution; and

(e) Notwithstanding the foregoing provisions of this Part, no nominations of candidates shall be required prior to the reappointment of a person who has served not more than one year as a member of the Banking Board.

§ 1.2 Approval of Governor

This Part shall become effective on the first day of the month following its approval by the Governor. Approved by Governor April 28, 1969.]

PART 2

[BANKING BOARD] Superintendent's Regulations: PROCEDURE IN REMOVAL PROCEEDINGS

(Statutory authority: Banking Law, §§ 14[1], 41)

Sec.
2.1 Right of parties
2.2 Notice of hearing
2.3 Answer
2.4 Hearing
2.5 Hearing officer
2.6 Transcripts
2.7 Briefs and argument after taking evidence
2.8 Hearing officer's report
2.9 Exceptions to hearing officer's report and argument thereon
2.10 Service of all papers
2.11 Copies of papers
2.12 Counsel
2.13 Extension of time
2.14 Construction

§ 2.1 Rights of parties

Parties to removal proceedings before the [Banking Board] Superintendent shall at all stages thereof have all fundamental rights, including the rights of counsel, cross-examination, presentation of evidence, objection and motion.

§ 2.2 Notice of hearing

(a) Upon receipt by the [Banking Board from the superintendent] of any certification of facts pursuant to Banking Law, section 41, the [Banking Board] Superintendent shall cause notice to be served as provided in said section[, and shall cause a copy of such notice to be served upon the superintendent].

(b) Such notice shall specify when and where a hearing is to be held. Such hearing shall be held not less than 30 days from the date of service of such notice upon the director, trustee or officer sought to be removed (herein after referred to as the "respondent"), unless the respondent or the superintendent shall in writing, for good cause shown, request a hearing at an earlier date, in which event the [Banking Board] Superintendent may, in its discretion, direct a hearing at such earlier date.

(c) A copy of the superintendent's certification and of this Part shall be annexed to the

aforesaid notices served pursuant to the Banking Law, section 41.

§ 2.3 Answer

The respondent may file an answer to the [superintendent's] Superintendent's certification within 20 days after service upon the respondent of the notice of hearing. The answer shall be filed with the [Banking Board, and the Banking Board shall serve a copy thereof on the superintendent] Superintendent.

§ 2.4 Hearing

(a) The respondent and the [superintendent] Superintendent shall appear for hearing [before the Banking Board] before the Superintendent at the place and time fixed in the notice of hearing.

(b) If it shall appear at the hearing that there are material disputed issues of fact, or if the superintendent or respondent requests oral testimony, or if the [Banking Board] Superintendent for any reason desires oral testimony, the [Banking Board] Superintendent shall direct that sworn evidence be taken, [either itself or] before a hearing officer designated by the [Banking Board] Superintendent.

§ 2.5 Hearing Officer

The [Banking Board] Superintendent may designate a hearing officer to take any evidence for the [Banking Board] Superintendent. [The hearing officer shall be a member of the Banking Board other than the superintendent.] The hearing officer shall have all powers necessary for the taking of evidence, including but not limited to the following powers:

(a) to fix the time or times when, and the place or places where, the evidence shall be taken;
(b) to regulate the course of the hearings and the conduct of the parties and their counsel;
(c) to consider and rule upon all objections to evidence and motions regarding the same, and to receive any offers of proof.

§ 2.6 Transcripts

All hearings, whether before the Banking Board or a hearing officer, shall be stenographically recorded and transcribed. Copies of such transcript may be purchased from the reporter by the respondent and the superintendent.

§ 2.7 Briefs and argument after taking evidence

After the evidence has been taken, whether before the [Banking Board itself] Superintendent or a hearing officer, and within such time as may be fixed by the [Banking Board] Superintendent or the hearing officer as the case may be, the respondent and the

[superintendent] Superintendent shall be afforded an opportunity to file briefs and proposed findings with, and shall be allowed oral argument before[, the Banking Board or] the hearing officer as the case may be.

§ 2.8 Hearing officer's report

(a) If the evidence has been taken before a hearing officer, he shall, after considering the briefs and proposed findings that may have been filed with him and any oral argument that may have been made before him, make and file a report with the [Banking Board] Superintendent, and shall thereupon serve a copy of such report on the respondent [and on the superintendent]. Such report shall contain:

(1) recommended findings of fact, together with the page numbers of the transcript supporting those findings;

(2) recommended conclusions of law;

(3) any statement as to the credibility of witnesses that the hearing officer may deem desirable.

(b) Together with his report, the hearing officer shall file with the [Banking Board] Superintendent the entire record of the proceedings before him, including the transcript, any exhibits, and the briefs and proposed findings of the parties, if any were filed.

§ 2.9 Exceptions to hearing officer's report and argument thereon

(a) Within 15 days after service of the hearing officer's report, the respondent and the [superintendent] Superintendent may respectively serve upon each other[, and file with the Banking Board], exceptions to the report and briefs in support of the exceptions. Answering briefs may be served and filed with the [Banking Board] Superintendent within 15 days after service of the original brief. Argument in opposition to recommended findings of fact shall include specific page references to the transcript.

(b) If either the respondent or [superintendent] Superintendent desires oral argument before the [Banking Board] hearing officer, written request therefore shall be made no later than the last date for filing briefs. Upon such request, or on its own motion, the [Banking Board] Superintendent shall direct oral argument and shall serve notice upon the respondent [and the superintendent] of the time when and the place where such oral argument shall be heard.

§ 2.10 Service of all papers

Except as otherwise provided by statute:

(a) All papers to be served upon the [superintendent] Superintendent may be served personally or by registered mail upon him, upon such deputy superintendent as he may designate for that purpose, or upon his attorney of record in the proceeding.

(b) All papers to be served upon the respondent may be served personally or by registered

mail upon such respondent or upon his attorney of record.

(c) All papers to be filed with the [Banking Board] Superintendent shall be filed with the secretary thereof.

§ 2.11 Copies of papers

(a) Any certification of facts filed by the [superintendent] Superintendent shall be filed in sufficient copies [so that, after service of copies thereof as provided in section 2.2 of this Part, 16 copies thereof shall remain with the Banking Board].

(b) There shall be filed 16 copies of any other documents or papers filed with the [Banking Board] Superintendent.

(c) The requirement as to copies shall not apply to transcripts of testimony or exhibits, the number of copies of which shall be prescribed by the [Banking Board] Superintendent for each individual case.

(d) If any party shall in any particular case deem the filing of the required number of copies to be onerous, he may make written application upon good cause to the Banking Board, or to such member or members as it may designate, for leave to file a lesser number of copies.

§ 2.12 Counsel

(a) The [Banking Board] Superintendent may retain counsel to advise and assist it, or the hearing officer, in the conduct of the proceedings and the preparation of any documents. The name of such counsel shall be placed upon the record at the outset of the hearings.

(b) The appearance of any party by attorney shall be noted by filing with the [Banking Board] Superintendent a statement signed by the party setting forth the name and address of such attorney.

§ 2.13 Extension of time

The [Banking Board, or such member or members as it may designate,] Superintendent may extend the time for the commencement or continuance of any hearing before the [Banking Board] Superintendent, or for the service and filing of any paper or document authorized or required by this Part to be filed with the [Banking Board] Superintendent.

§ 2.14 Construction

This Part shall be liberally construed and shall not be deemed to limit the powers conferred on the [Banking Board] Superintendent by the Banking Law.

PART 3

Superintendent's Regulations: FALSE REPORTING

(Statutory authority: Banking Law, §§ 10, 14(1)(o) and (p), 41)

Sec.
3.1 Making of false entries and omission of true entries
3.2 Banking Board's findings
3.3 Violation basis for removal proceedings

§ 3.1 Making of false entries and omission of true entries

No director, trustee or officer of any corporate banking organization or bank holding company (as such term is defined in Banking Law, § 141), and no person or persons in charge of, and no officer of, a branch of a foreign banking corporation, shall knowingly make or cause to be made any false entry in any book, report or statement of such corporate banking organization or branch, nor shall any such director, trustee, officer or person knowingly omit or cause to be omitted there from a true entry of any material particular pertaining to the business of such corporate banking organization or branch, which false entry or omission is intended or may reasonably be expected to deceive or mislead any director, trustee or officer of such corporate banking organization or branch, or the [superintendent] Superintendent or any deputy superintendent or any examiner or other employee of the Department.

§ 3.2 Superintendent's findings

The [superintendent] Superintendent hereby finds that violation of any of the provisions of section 3.1 of this Part:

(a) is inconsistent with and prejudicial to the safe and sound conduct of the business of banking organizations;

(b) is inconsistent with and prejudicial to the interest of the public, and is inconsistent with and prejudicial to the interests of depositors, creditors, shareholders and stockholders, as the case may be and

(c) constitutes an unsafe manner of conducting the business of banking organizations.

§ 3.3 Violation basis for removal proceeding

The [superintendent] Superintendent hereby finds that violation of any of the provisions of section 3.1 of this Part by any director, trustee, officer or other person, as described in such section affords a proper basis for a removal proceeding pursuant to the provisions of Banking Law, section 41, upon certification by the [superintendent] Superintendent, in his discretion, of the facts relating to such violation.

PART 4

Superintendent's Regulations: MAXIMUM INTEREST RATE ON CERTAIN LOANS
(Statutory authority: Banking Law, § 14-a[2])

Sec.
4.1 Interest rate
4.2 Amounts included as interest
4.3 Amounts not included as interest in certain home mortgage loans
4.4 Calculation of maximum rate of interest
4.5 Interest rate applicable to subsequent advances
4.6 Applicability

§ 4.1 Interest rate.

For the purpose of General Obligations Law sections 5-501 and 5-524, and Banking Law sections 108(1), 173(1), 202(1), 235-b, 380-e, 454(6), 510-a(1) and 577(1), and except as otherwise provided by law, the maximum rate of interest to be charged, taken or received, upon a loan or forbearance of any money, goods, or things in action is as follows:

Effective July 1, 1968.....7.25% per annum

Effective February 16, 1969.....7.50% per annum

Effective August 15, 1973.....8.00% per annum

Effective October 11, 1973.....8.50% per annum

Effective December 8, 1978.....9.50% per annum

Effective May 1, 1979.....9.75% per annum

Effective August 1, 1979.....10.00% per annum

Effective November 1, 1979.....10.25% per annum

Effective February 1, 1980.....10.50% per annum

Effective May 1, 1980.....10.75% per annum

Effective August 1, 1980.....11.00% per annum

Effective November 1, 1980.....11.25% per annum

Effective December 1, 1980.....16.00% per annum

§ 4.2 Amounts included as interest.

The term interest as used in section 4.1 of this Part:

(a) when applied to any loan or forbearance secured primarily by an interest in real property improved by a one- or two-family residence occupied by the owner, shall include origination fees, points and other discounts and all other amounts paid or payable, directly or indirectly, by any person, to or for the account of the lender in consideration for making the loan or forbearance. The fees, charges and costs described in section 4.3 of this Part do not constitute amounts paid or payable, directly or indirectly, to or for the account of the lender in consideration for making the loan or forbearance and are not included in "interest";

(b) when applied to any other loan or forbearance, shall mean all amounts paid or payable, directly or indirectly, by any person, to or for the account of the lender which would be includible as interest under New York law as it existed prior to the enactment of chapter 349 of the Laws of 1968;

(c) when applied to any loan or forbearance insured by the New York City Rehabilitation Mortgage Insurance Corporation, shall not include premiums paid for insurance pursuant to section 654(13)(a) of the Private Housing Finance Law.

§ 4.3 Amounts not included as interest in certain home mortgage loans.

The term interest for purposes of subdivision (a) of section 4.2 of this Part shall not include the following amounts payable in connection with the loan or forbearance, if itemized in writing to the borrower:

(a) a reasonable fee in consideration for the legally enforceable written commitment of the lender to reserve funds for future disbursement to the borrower, provided such commitment was made prior to November 1, 1968;

(b) reasonable fees, charges and costs for the following services actually and necessarily rendered:

(1) appraisal of property securing the loan or forbearance;

(2) preparation of surveys, abstracts or similar documents;

(3) title examinations, examinations of public records or similar procedures;

(4) title insurance;

(5) legal services and reasonable disbursements related thereto;

(6) notarizations, authentications or similar procedures; and

(7) periodic inspections related to advances to be made under the loan agreement;

(c) fees and charges prescribed by law for determining the existence of or for filing, recording or otherwise perfecting or releasing or satisfying any security, or the premiums, not in excess of such fees and charges, payable for any insurance in lieu of perfecting the security;

(d) actual and lawful charges or premiums for:

(1) completion or performance bonds;

(2) insurance against loss of or damage to property securing the loan or forbearance;

(3) insurance against liability arising out of the ownership or use of property securing the loan or forbearance; and

(4) credit life, accident or health insurance if the same is:

(i) not a condition of the loan or forbearance and such fact is clearly disclosed in writing to the borrower; and

(ii) requested in writing by the borrower after written disclosure to him of the cost thereof;

(5) mortgage guaranty insurance as and to the extent:

(i) premiums for such insurance are excepted from interest for the purposes of section 5-501 of the General Obligations Law; and

(ii) the mortgagor may be required to pay such premiums;

as provided in article 65 of the Insurance Law or such other law or laws and regulations promulgated pursuant thereto as may be applicable;

(e) charges for the payment of transfer, mortgage recording and other taxes and governmental charges;

(f) funds held by the lender for future payments of taxes, assessments, water or sewer charges and insurance premiums described in subdivision (d) of this section;

(g) fees and charges paid or payable pursuant to a written agreement or modification thereof between the lender and the borrower upon the occurrence of specific acts or defaults of the borrower, such as:

(1) prepayment penalties;

(2) charges for delinquent or late payments; and

(3) collection fees;

(h) any amount paid or payable by or for a third-party employer to a lender to aid in financing the sale of a residence owned by an employee of such third-party employer or the purchase of a residence by such employee, provided the third-party employer certifies in writing to the borrower that he will not be required to reimburse the third party, either in whole or in part, directly or indirectly, for any such payment; and

(i) such other fees and charges as may be specifically authorized by Federal or State law or regulation.

§ 4.4 Calculation of maximum rate of interest

The term maximum rate of interest as used in sections 4.1 and 4.5 of this Part, when applied to any loan or forbearance, secured primarily by an interest in real property, improved by a one-or two-family residence occupied by the owner, shall mean that annual percentage rate which will yield a sum equal to the amount of "interest" as defined in subdivision (a) of section 4.2 of this Part when such rate is applied to the unpaid balances of the amount financed, calculated according the actuarial method (United States rule) by allocating payments between the amount financed and the amount of such "interest" so that a payment is applied first to such "interest" and the balance to the unpaid amount financed. The term amount financed as used in this section shall mean the sum of (a) the amount of the loan paid to, receivable by, or paid or payable for the account of the borrower, plus (b) such fees, charges or costs not included in "interest" as defined in subdivision (a) of section 4.2 of this Part but which at the time of any calculation of interest have been added to the loan or forbearance. Such term maximum rate of interest, when applied to any loan or forbearance not secured primarily by an interest in real property improved by a one-or two-family residence occupied by the owner, shall mean that annual percentage rate calculated according to any method authorized under New York law as it existed prior to the enactment of chapter 349 of the Laws of 1968.

§ 4.5 Interest rate applicable to subsequent advances.

Where an agreement with the borrower provides that the lender shall advance funds from time to time, the maximum rate of interest applicable to each advance shall be the maximum rate of interest authorized by law at the time the first advance was made.

§ 4.6 Escalation provisions in amortization loans.

For the purpose of General Obligations Law, section 5-501(3) and (4), if a loan or forbearance secured primarily by an interest in real property improved by a one- or two-family residence

occupied by the owner, providing for regular payments of principal and interest designed fully or partially to amortize the principal amount thereof, is extended or a new loan substituted therefore by the original lender or a subsequent assignee as a consequence of:

(a) the exercise or forbearance from exercising an option to declare the loan due and payable prior to its normal maturity date; or

(b) the loan, by its terms, becoming due and payable prior to its normal maturity date, the original loan or forbearance together with such extended or substituted loan shall constitute a single loan or forbearance, provided that this section shall not apply in the event:

(1) exercise of the option, forbearance from exercising the option or accelerated maturity of the loan results from the obligor's act or default; or

(2) the extended or new loan or forbearance is made in consideration for additional funds, a release of a portion of the mortgaged property or other change in the terms of the loan or forbearance specifically requested in writing by the obligor.

As used in this section, the term normal maturity date shall mean the date on which the principal amount of the loan would be fully amortized by regular payments of principal and interest each substantially equal to the first required regular payment.

§ 4.7 Applicability

This Part shall apply only to a loan or forbearance made on or after July 1, 1968.

PART 5

Superintendent's Regulations: INTERNAL AND EXTERNAL AUDITS AT BRANCHES AND AGENCIES OF FOREIGN BANKING CORPORATIONS

(Statutory Authority: Banking Law, §§ 14, 37, 204)

Sec.
5.1 Purpose
5.2 Definitions
5.3 External credits
5.4 Internal audits
5.5 Compliance with laws and regulations
5.6 Additional actions and orders
5.7 Compliance with Federal regulations

§ 5.1 Purpose

In order to maintain and enhance the safety and soundness of foreign banks' New York offices, the superintendent is establishing criteria which would require under certain circumstances that such offices utilize independent external and internal auditors satisfactory to the [superintendent] Superintendent. The [superintendent] Superintendent believes that the foreign bank office's annual ROCA-A examination ratings serves as a straightforward and meaningful measure to determine whether foreign bank offices require such additional assistance. Nothing contained in this Part shall be deemed to limit the authority of the superintendent under the provisions of the Banking Law.

§ 5.2 Definitions

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For purposes of this Part:

(a) The term *foreign bank office* means a branch or an agency of a foreign banking corporation licensed by the [superintendent] Superintendent to conduct a banking business in New York.

(b) The term *GAAP* means United States generally accepted accounting principles.

(c) The term *GAAS* means United States generally accepted auditing standards.

(d) The term *ROC-A* examination rating means the examination rating system for a foreign bank office conducting a banking business in the United States, in which the term ROC-A stands for risk management, operational controls, compliance, and asset quality.

(e) The term *independent external auditor* means an independent public accountant registered or licensed to practice as a public accountant in New York State.

§ 5.3 External Audits

(a) Those foreign bank offices with a composite ROC-A rating of four or worse, and a separate Operational Controls ("0") rating of four or worse, and, on a case-by-case basis as determined

by the superintendent, foreign bank offices with an "0" rating of three or worse, regardless of the composite rating, must engage an independent external auditor, subject to the superintendent's approval, to:

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(1) issue a report on the foreign bank office's balance sheet and accompanying disclosures, which shall include off-balance sheet amounts and assets held on behalf of others. The balance sheet and disclosures must be stated under GAAP and audited under GAAS. The balance sheet and disclosures must be audited as of a quarter-end date within six months following the date the Department issues its transmittal letter corresponding to an examination report and annually thereafter for such period as the foreign bank office shall be subject to this subdivision.

(2) attest to management's assertions regarding the effectiveness of the foreign bank office's internal control structure over financial reporting based on reasonable criteria established by management. Independent external auditor attestation reports must be performed in accordance with United States generally accepted standards for attestation engagements. These reports must be dated as of the same date chosen in paragraph (1) of this subdivision.

(b) The superintendent may, in the superintendent's discretion, require foreign bank offices, in addition to the requirements imposed in subdivision (a) of this section, to engage an independent external auditor, subject to the superintendent's approval, to perform agreed-upon procedures or other additional engagements in accordance with United States auditing or attestation standards. The superintendent will identify specific objectives based on the examination findings, and permit the foreign bank office to draft the procedures with its independent external auditors for the superintendent's approval and agreement.

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(c) For balance sheet and disclosures audits required pursuant to subdivision (a) of this section, a consolidating balance sheet must be provided where applicable.

(d) When an independent external auditor determines that a "disclaimer of opinion" is required for a report pursuant to this Part, management and the independent external auditor must consult with the superintendent before such report is issued.

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(e) The reports of independent external auditors required pursuant to subdivisions (a) and (b) of this section shall be submitted by management to the superintendent no later than six months from the date the superintendent approves the appointment of the independent external auditor. For each report issued, independent external auditors also must provide a formal management letter containing recommendations to improve internal controls, and include management's response to each recommendation. Management letters are to be provided to the superintendent within two months of the initial report's issuance. Extensions of deadlines shall require the written approval of the superintendent.

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(f) The reports of independent external auditors together with supporting workpapers must be in English. Workpapers shall be made available to the superintendent upon the

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superintendent's request.

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(g) Management of the foreign bank office shall notify the superintendent in writing if the services of the independent external auditor are terminated prior to the end of the engagement and issuance of the reports, and the reasons for the termination. The notification must be provided within fifteen days of such termination.

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§ 5.4 Internal Audits

(a) The superintendent encourages all foreign bank offices to employ qualified internal auditors as an important aspect of adequate internal control. The superintendent may, in his or her discretion, require a foreign bank office to follow requirements similar to those set forth in paragraph (b) of this section.

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(1) Internal auditors, whether head office, resident or regional, are expected to be well-qualified to perform their duties. Qualified internal auditors should possess significant experience in bank accounting, auditing and control functions, and attend relevant professional education courses on an annual basis.

(b) Foreign bank offices with a composite ROC-A rating of four or worse, and an "O" rating of four or worse, and, on a case-by-case basis as determined by the superintendent, foreign bank offices with an "O" rating of three or worse, regardless of the composite rating, must have comprehensive on-site internal audits performed annually by either the foreign banking corporation's head office internal auditors or a foreign bank office resident or regional internal auditors who report directly to the head office.

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(1) A "comprehensive internal audit" shall include the performance of annual detailed internal audit procedures on all high risk areas which represent significant potential exposure to the foreign bank office. The designation of high risk areas will require the internal auditor's judgment, and will be reviewed during examinations of the office.

(2) Foreign bank office resident or regional internal auditors should be hired with the approval of the foreign banking corporation's head office and be authorized to communicate directly with the head office without any foreign bank office management intervention. The superintendent requires such resident or regional internal auditors to remain independent of foreign bank office management.

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(c) The superintendent may, in his or her discretion, require foreign bank offices subject to subdivision (b) of this section to have the comprehensive on-site internal audits performed annually by part-time or full-time regional or resident internal auditors who report directly to head office. The superintendent shall decide whether the internal auditors shall be part-time or full-time, taking into consideration the size and activities of the foreign bank office. Any such internal audit shall follow the requirements described in subdivision (b) of this section. In addition, at the time of each onsite examination, the foreign bank office shall present to the

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examiner in charge the formal qualifications of the internal auditors and the internal auditors' actual work plan since the previous examination and the internal auditors' program for the next twelve-month period.

(d) Reports of internal auditors required under this Part together with supporting workpapers must be in English. Workpapers shall be made available to the superintendent upon request.

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§ 5.5 Compliance with Laws and Regulations

Coincidental with the reports issued pursuant to section 5.3 of this Part, management shall assert its compliance with applicable laws and regulations.

§ 5.6 Additional Actions and Orders

The requirements outlined in this Part are in addition to any other additional supervisory or enforcement actions that the superintendent may impose against a foreign bank office.

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§ 5.7 Compliance with Federal Regulations

Compliance by an insured foreign bank office with section 112 of the Federal Deposit Insurance Corporation Improvement Act (12 U.S.C. § 1831m), as it may be amended from time to time, shall be deemed compliance by that insured foreign bank office with section 5.3(a) of this part, subject to the superintendent's authority to require additional procedures as may be deemed to be necessary.

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PART 6

Superintendent's Regulations: ADDITIONAL AUTHORITY OF BANKS, TRUST COMPANIES, SAVINGS BANKS AND SAVINGS AND LOAN ASSOCIATIONS PURSUANT TO BANKING LAW, SECTIONS 14-G AND 14-H

(Statutory Authority: Banking Law, §§ 14-g, 14-h)

Sec.

6.1 Statement of purpose
6.2 Application procedure
6.3 Additional insurance powers of banks and trust companies
6.4 Additional insurance powers of savings banks and savings and loans associations
6.5 Investments in community development entities or projects
6.6 Exemption from requirements of Banking Law, section 7010 concerning mandated number of meetings of boards of directors and executive committees of banks and trust companies
6.7 Additional authority of banks and trust companies to underwrite and deal in certain securities, including municipal bonds
6.8 Overdraft protection charges
6.9 Merger of a bank or trust company with a nonbank affiliate
6.10 Investment in a public deposit bank subsidiary by a savings bank or savings and loan association

§ 6.1 Statement of purpose.

In enacting section one of chapter three of the Laws of 1997, the Legislature found and declared "that the rapid expansion of federal banking powers requires a means to ensure parity, in a timely manner, between banks and trust companies and national banks, in order to preserve and enhance the state banking charter." It was the stated intention of the Legislature that section one of chapter three of the Laws of 1997 "be construed in such a manner as to ensure that banks and trust companies may exercise the same rights and powers and engage in the same activities as national banks, on substantially the same terms and conditions as national banks." It was the further stated intention of the Legislature "that in exercising any right or power or engaging in any activity pursuant to (section one of chapter three of the Laws of 1997,) that is subject to licensing or regulation by any authority or agency of this state other than the superintendent, a bank or trust company be subject to the same licensing and supervisory requirements that apply to other persons who are authorized to exercise such rights or powers or engage in such activities."

§ 6.2 Application procedure.

In addition to such rules or regulations adopted by the [superintendent] Superintendent at the request of the [superintendent] Superintendent, any bank, trust company or other person may make a request to the superintendent to promulgate a rule or regulation pursuant to the authority of section 14-g of the Banking Law to enable banks and trust companies to exercise any right, power, privilege, or benefit, to engage in any activity, or enter into any loan, investment or transaction that a national bank may lawfully exercise or into which it may lawfully engage or enter, acting either directly or through a subsidiary or subsidiaries. Such bank, trust company or other person shall submit a written application to the [superintendent] Superintendent, which shall include the following information:

(a) a citation to the relevant Federal authority that enables a national bank to exercise the right, power, privilege or benefit, engage in the activity, or enter into the loan, investment or transaction which the superintendent is being requested to extend to banks and trust companies;

(b) an analysis supporting the conclusion that the exercise of such right, power, privilege or benefit, or the engagement in such activity, or the entering into such loan, investment or transaction is:

(1) consistent with the policy of the State of New York as declared in section 10 of the Banking Law and is thereby in the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers; and

(2) necessary to achieve or maintain parity between banks and trust companies and national banks with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions;

(c) a statement as to whether the exercise of the right, power, privilege, or benefit, the engaging in the activity, or the entering into of the loan, investment or transaction sought to be extended to banks and trust companies is subject to regulation by any other governmental authority, State or Federal, and a discussion of such regulatory requirements; and

(d) such other information as the superintendent may require.

§ 6.3 Additional insurance powers of banks and trust companies.

(a) The [superintendent] Superintendent hereby finds that the promulgation of this section is consistent with the policy of the State of New York as declared in section 10 of the New York Banking Law and thereby protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers and is necessary to achieve or maintain parity between banks and trust companies and national banks with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions.

(b) The [superintendent] Superintendent hereby finds that title 12, United States Code, section 92, and title 12, Code of Federal Regulations,* section 7.1001, permit national banks located and doing business in places the population of which does not exceed 5,000 persons to sell insurance directly. Such power of national banks to sell insurance directly pursuant to title 12, United States Code,* section 92, was unanimously upheld by the United States Supreme

Court in the case of Barnett Bank of Marion County, N.A. v. Nelson, 517 U.S. 25, 116 S. Ct. 1103 (1996).

(c) Banks and trust companies located and doing business in any place the population of which does not exceed 5,000 inhabitants, as shown by the last preceding decennial census, may act as the agent for any fire, life, or other insurance company authorized by the authorities of the state in which the bank is located to do business in such state, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the bank or trust company and the insurance company for which it may act as agent; provided, however, that no such bank or trust company shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal; and provided further, that the bank shall not guarantee the truth of any statement made by an assured in filing his or her application for insurance.

(d) This section is applicable to any office of a bank or trust company when the office is located in a place with a population of less than 5,000, even though the principal office of such bank or trust company is located in a place with a population exceeding 5,000.

(e) Banks and trust companies engaging in the business of insurance pursuant to this section shall do so subject to regulation by the Department and pursuant to all the insurance laws, rules and regulations, provided, however, that the [superintendent] Superintendent may exempt banks or trust companies from any insurance law, rule or regulation which has been preempted under Federal law, rule or regulation for national banks if such law, rule or regulation has been preempted because it applies to insurance activities of banks or trust companies and not to insurance activities of other entities.

(f) Banks and trust companies engaging in the business of insurance pursuant to this section shall comply with the following requirements relating to the sale of insurance.

(1) Except with respect to a credit unemployment insurance policy, group credit life insurance policy, a group credit health, group credit accident or group credit health and accident policy, or similar group credit insurance covering the person of the insured, banks, trust companies and any person soliciting the purchase of or selling insurance on the premises thereof, must disclose or cause to be disclosed in writing, in clear and concise language, to their customers and prospective customers who are solicited therefor that any insurance offered or sold:

(i) is not a deposit;

(ii) is not insured by the Federal Deposit Insurance Corporation; and

(iii) is not guaranteed by the bank or trust company.

(2) Except with respect to a flood insurance policy, or a credit unemployment insurance policy, group credit life insurance policy, a group credit health, group credit accident or group credit health and accident policy, or similar group credit insurance covering the person of the insured, when a customer obtains insurance and credit from a bank or trust company, then the credit and insurance transactions shall be completed through separate documents. The expense of insurance premiums may not be included in the primary credit transaction without the express written consent of the customer.

(3) Banks and trust companies shall not extend credit, lease or sell property of any kind, or furnish any services, or fix or vary the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from the bank or trust company, its affiliate

or subsidiary, or a particular insurer, agent or broker. This prohibition shall not prevent a bank or trust company from informing a customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the customer's procurement of acceptable insurance, or that insurance is available from the bank or trust company; provided, however, that the bank or trust company shall also inform the customer in writing that his or her choice of insurance provider shall not affect the bank or trust company's credit decision or credit terms in any way. Such disclosure shall be given again prior to or at the time that a bank, trust company or person selling insurance on the premises thereof solicits the purchase of any insurance from a customer who has applied for a loan or extension of credit.

(g) (1) Preemption of Insurance Law, section 2501. Pursuant to section 2501 of the Insurance Law, a licensed insurance agent or broker who is owned or controlled, directly or indirectly, by a bank shall not negotiate any insurance policy covering real or personal property which is the subject matter of, or security for, a loan or extension of credit made by the bank or by any other bank which is owned or controlled, directly or indirectly, by such bank. For purposes of section 2501 of the Insurance Law, the term bank includes, among other entities, a national bank whose principal office is located in New York.

(2) The superintendent hereby finds that the restrictions of section 2501 of the Insurance Law are preempted with respect to banks and trust companies. The [superintendent] Superintendent further finds, that section 2501 of the Insurance Law has been preempted because it applies to insurance activities of banks and trust companies and not to insurance activities of other entities. In support of such findings, the superintendent takes note that the United States District Court for the Western District of New York has ruled in the case of New York Bankers Association, Inc. et al. v. Neil D. Levin, et al., 97-CIV-6423T, March 27, 1998, that section 2501 of the New York State Insurance Law is preempted by title 12, United States Code, section 92, and the [superintendent] Superintendent may not impose the restrictions of section 2501 of the Insurance Law against a national bank doing business pursuant to title 12, United States Code, section 92, in a place the population of which does not exceed 5,000 inhabitants.

* For information regarding the United States Code (USC or U.S.C.), the Code of Federal Regulations (CFR) and the Federal Register, see Supervisory Policy G 1.

§ 6.4 Additional insurance powers of savings banks and savings and loan associations.

(a) The [superintendent] Superintendent hereby finds that the promulgation of this section is consistent with the policy of the State of New York as declared in section 10 of the New York Banking Law and thereby protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers and is necessary to achieve or maintain parity between savings banks and savings and loan associations and national banks with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions relating to engaging in the insurance business.

(b) Savings banks and savings and loan associations may engage in the insurance business to the extent that banks and trust companies may engage in the insurance business pursuant to section 6.3 of this Part, as such section may be amended from time to time. All conditions, restrictions and disclosure requirements imposed upon banks and trust companies in section 6.3 of this Part with respect to engaging in such insurance business shall apply with equal force

and effect to savings banks and savings and loan associations engaging in business pursuant to the authority granted by this section.

§ 6.5 Investments in community development entities or projects.

(a) The [superintendent] Superintendent hereby finds that the promulgation of this section is consistent with the policy of the State of New York as declared in section 10 of the New York State Banking Law and thereby protects the public interest, including the interest of depositors, creditors, shareholders, stockholders and consumers and is necessary to achieve or maintain parity between banks and trust companies and national banks with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions.

(b) The [superintendent] Superintendent hereby finds that title 12, United States Code,* sections 93a, 481 and 1818, 1994 edition, and title 12, Code of Federal Regulations,* part 24, permits national banks to make investments designed primarily to promote the public welfare, including the welfare of low-and moderate-income areas or individuals, such as by providing housing, services or jobs.

(c) A bank or trust company may make equity investments in community development entities or projects provided that any such entity or project primarily serves a public purpose. An entity or project will be deemed to serve a public purpose if it primarily benefits low- and moderate-income individuals, low-and moderate-income areas, or other areas targeted for redevelopment by the local, State, tribal or Federal government (including Federal enterprise communities and Federal empowerment zones) by providing or supporting one or more of the following activities:

(1) affordable housing, community services, or permanent jobs for low- and moderate-income individuals;

(2) equity or debt financing for small businesses;

(3) area revitalization or stabilization; or

(4) other activities, services, or facilities that primarily promote the public welfare.

(d) In addition, the bank or trust company should demonstrate that is not reasonably practicable to obtain other private market financing for the proposed investment, the extent to which the investment benefits communities otherwise served by the bank and non-bank community support for or participation in the investment. Community support or participation may be demonstrated in a variety of ways, including but not limited to:

(1) in the case of an investment in a CD entity with a board of directors, representation on the board of directors by non-bank community representatives with expertise relevant to the proposed investment;

(2) establishment of an advisory board for the bank's community development activities that includes non-bank community representatives with expertise relevant to the proposed investment;

(3) formation of a formal business relationship with a community-based organization in connection with the proposed investment;

(4) contractual agreements with community partners to provide services in connection with the proposed investment;

(5) joint ventures with local small businesses in the proposed investment; and

(6) financing for the proposed investment from the public sector or community development organizations.

(e) A bank or trust company's aggregate outstanding investments under this Part may not exceed five percent of its capital and surplus, unless the bank or trust company is at least adequately capitalized and the Department of Financial Services determines, by written approval of the bank or trust company's proposed investment(s), that a higher amount will pose no significant risk. In no case may a bank or trust company's aggregate outstanding investments under this Part exceed 10 percent of its capital and surplus. A bank or trust company may not make an investment under this Part that would expose the bank or trust company to unlimited liability.

(f) A bank or trust company shall be eligible to use a self-certification process if it:

(1) is well capitalized within the meaning of applicable Federal regulations;

(2) has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System and is not the subject of any regulatory orders or agreements; and

(3) has a Community Reinvestment Act rating of at least "satisfactory."

A bank or trust company that is adequately capitalized and that has a composite rating of 3 with demonstrable improving trends may seek written permission from the superintendent to self- certify investments made under this Part.

(g) An eligible bank or trust company may self-certify the following investments without prior notice to or approval by the superintendent:

(1) investments in an entity that finances, acquires, develops, rehabilitates, manages, sells, or rents housing primarily for low- and moderate-income individuals;

(2) investments that finance small businesses (including equity or debt financing and investments in an entity that provides loan guarantees) that are located in low- or moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(3) investments that provide credit counseling, job training, community development research, and similar technical assistance services for non-profit community development organizations, low- and moderate-income individuals or areas, small businesses located in low- or moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(4) investments in an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a low-or moderate-income area and occupied primarily by small businesses, or that is occupied primarily by small businesses that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(5) investments as a limited partner, or as a partner in an entity that is itself a limited partner in a project with a general partner that is, or is primarily owned and operated by, a 26 U.S.C. 501(c)(3) or (4) non-profit corporation and that qualifies for the Federal low-income housing tax credit. (This publication, the 1994 edition, published in 1995, may be viewed at the New York State Department of Financial Services, located at New York, NY 10004 and the Department of State located at Albany, NY 12231. The United States Code is published by the Office of Law Revision Counsel of the House of Representatives. This publication is for sale by the U.S.

Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, DC 20402-9328);

(6) investments in low- or moderate-income areas that produce or retain permanent jobs, the majority of which are held by low- and moderate- income individuals; and

(7) investments in a banking organization that has been identified by the superintendent as a banking organization with a community development focus or in a national bank that has one or more offices or branches in New York and that has been approved by the OCC as a national bank with a community development focus.

(h) An otherwise eligible bank or trust company may not self-certify an investment if:

(1) the investment involves properties carried on the bank's or trust company's books as "other real estate owned;" or

(2) more than 25 percent of the investment funds projects in a State or metropolitan area other than the states or metropolitan areas in which the bank or trust company maintains its main office or branches; or

(3) the Department determines, in published guidance, that the investment is inappropriate for self-certification.

(i) To self-certify an investment, an eligible bank or trust company shall submit to the superintendent a notice of self-certification within 10 days after it makes the investment. The notice shall include:

(1) the name of the entity or project in which the bank or trust company has invested and the date on which the investment was made;

(2) the type of investment (equity or debt), the eligible investment activity that the investment supports, and a brief description of the particular investment;

(3) the amount of the bank or trust company's total investment in the entity or project and the bank or trust company's aggregate outstanding investments under this Part, including commitments and the investment being self-certified;

(4) the percentage of the bank or trust company's capital and surplus represented by the bank or trust company's aggregate outstanding investments under this Part, including commitments and the investment being self-certified;

(5) a statement certifying compliance with subdivisions (c) and (d) of this section; and

(6) if necessary, a statement certifying that no more than 25 percent of the investment funds projects in a state or metropolitan area other than the states or metropolitan areas in which the bank or trust company maintains its main office or branches.

(j) If a bank or trust company seeking to make an investment may not self-certify the investment, it shall submit to the superintendent a request for prior approval to make the investment, including the following information:

(1) the name of the entity or project in which the bank or trust company proposed to invest and the proposed investment date;

(2) the type of investment (equity or debt), the eligible investment activity that the investment supports, and a description of the particular investment;

(3) the amount of the bank or trust company's investment in the entity or project, and the bank or trust company's aggregate outstanding investments under this Part, including commitments and the investment being proposed;

(4) the percentage of the bank or trust company's capital and surplus represented by the bank or trust company's aggregate outstanding investments under this Part, including commitments and the investment being proposed; and

(5) a statement certifying compliance with subdivisions (c) and (d) of this section;

(k) In reviewing a proposal, the Department considers the following factors and other available information:

(1) whether the investment satisfies the requirements of subdivisions (c) and (d) of this section;

(2) whether the investment is consistent with the safe and sound operation of the bank or trust company; and

(3) whether the investment is consistent with the requirements of this Part and the Department's policies.

(l) Unless otherwise notified in writing by the [superintendent] Superintendent, the proposed investment shall be deemed approved 30 calendar days from the date on which the Department receives the bank or trust company's investment proposal. The Department, by notifying the bank or trust company, may extend its period for reviewing the investment proposal. If so notified, the bank or trust company may make the investment only with the Department's written approval. The Department may impose one or more conditions in connection with its approval of an investment under this Part. All approvals are subject to the condition that a bank or trust company must conduct the approved activity in a manner consistent with any published guidance issued by the Department regarding the activity.

* For information regarding the United States Code (USC or U.S.C.), the Code of Federal Regulations (CFR) and the Federal Register, see Supervisory Policy G 1.

§ 6.6 Exemption from requirements of Banking Law, section 7010 concerning mandated number of meetings of boards of directors and executive committees of banks and trust companies.

(a) The [superintendent] Superintendent hereby finds that the promulgation of this section is consistent with the policy of the State of New York as declared in section 10 of the New York Banking Law and thereby protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers and is necessary to achieve or maintain parity between banks and trust companies and national banks with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions.

(b) The [superintendent] Superintendent hereby finds that section 7010 of the New York Banking Law mandates for each State-chartered bank and trust company that its board of directors must hold a regular monthly meeting at least 10 times a year and, during any three consecutive calendar months, the board must meet at least twice, and that its executive committee shall meet at least once in each 30-day period during which the board does not meet.

(c) The [superintendent] Superintendent hereby finds that there are no provisions contained in Subchapter III --Directors, title 12, United States Code, sections 71-78, which require a

national bank's board of directors to hold a specified number of meetings per annum, or which require executive committee meetings in the absence of a board meeting.

(d) The [superintendent] Superintendent hereby finds that title 12, Code of Federal Regulations, section 7.2000(b) provides that to the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, a national bank may elect to follow the corporate governance procedures of the law of the state in which the main office of the bank is located, the law of the state in which the holding company of the bank is incorporated, the Delaware General Corporation Law, Delaware Code Ann. title 8 (1991, as amended 1994, and as amended thereafter) or the Model Business Corporation Act (1984, as amended 1994, as amended thereafter) and that such national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.

(e) The [superintendent] Superintendent hereby finds that certain national banks which maintain their main offices in New York have not elected to follow the corporate governance procedures of New York, and finds further that the lack of any mandate to do so together act to place State-chartered banks and trust companies at a competitive disadvantage in finding qualified individuals to serve on their boards of directors.

(f) The [superintendent] Superintendent hereby finds that if a State-chartered bank or trust company is well capitalized (as defined in 12 C.F.R. section 325.103[b][1]), well managed (as defined in 12 C.F.R. section 362.17[e]) or, in the case of a non-depository institution, is in satisfactory condition as determined upon examination by the superintendent, and has been in existence for more than five years, unless the [superintendent] Superintendent, in his/her discretion, provides otherwise, its board of directors shall hold a regular meeting not less than six times a year, provided that during any three consecutive calendar months the board shall meet at least once, and its executive committee shall not be required to meet at least once in each 30-day period during which the board does not meet.

(g) The [superintendent] Superintendent hereby finds that in circumstances where one or more of the required criteria set forth in subdivision (f) of this section are not present to enable a board of directors of a bank to conduct a minimum of six regular meetings, the board shall conduct no less than 10 regular meetings, and the executive committee shall meet at least once in each 30-day period during which the board does not meet, unless otherwise permitted by the [superintendent] Superintendent upon application; and in so acting the [superintendent] Superintendent shall take into account all of the circumstances surrounding such application, including the principles of safety and soundness.

(h) The [superintendent] Superintendent hereby determines that qualified State-chartered banks and trust companies are hereby exempt from the requirement contained in section 7010 of the Banking Law which requires that for each State-chartered bank and trust company its board of directors shall hold a regular monthly meeting at least 10 times a year and its executive committee shall meet at least once in each 30-day period during which the board does not meet.

§ 6.7 Additional authority of banks and trust companies to underwrite and deal in certain securities, including municipal bonds.

(a) The [superintendent] Superintendent hereby finds that the promulgation of this section is consistent with the policy of the State of New York as declared in section 10 of the New York Banking Law and thereby protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers and is necessary to achieve or maintain parity between banks and trust companies and national banks with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions.

(b) The [superintendent] Superintendent hereby finds that section 24 (seventh) of title 12, United States Code and part 1 of title 12, Code of Federal Regulations permit a national bank to:

(1) deal in, underwrite, purchase and sell type I securities (including, in the case of a well capitalized national bank, municipal bonds as defined therein) in an amount not limited to a specified percentage of the bank's capital and surplus; and

(2) deal in, underwrite, purchase and sell type II securities, provided the aggregated par value of such securities issued by any one obligor held by the bank does not exceed 10 percent of the bank's capital and surplus.

(c) *Definitions.*

(1) The term *type I securities* shall have the same meaning as in title 12, *Code of Federal Regulations*, section 1.2(j), except that it shall include municipal bonds only if a bank or trust company is well capitalized.

(2) The term *type II securities* shall have the same meaning as in title 12, *Code of Federal Regulations, section 1.2(k).*

(3) The term capital stock, surplus fund and undivided profits shall have the same meaning as in Banking Law, section 103.

(4) The term *municipal bonds* shall have the same meaning as in title 12, *Code of Federal Regulations,* section 1.2(g).

(5) The term *well capitalized* shall have the same meaning as in part 208, section 208.43(b)(1) of title 12, *Code of Federal Regulations*, in the case of a bank or trust company that is a member of the Federal Reserve System, and the same meaning as in part 325, section 325.103(b)(1) of title 12, *Code of Federal Regulations*, in the case of a bank or trust company that is not a member of the Federal Reserve System; provided, however, that in no event will a bank or trust company be considered well capitalized if it is subject to any written agreement, order, capital directive or prompt corrective action directive issued by the superintendent to meet and maintain a specific capital level for any capital measure.

(d) (1) A bank or trust company may deal in, underwrite, purchase and sell type I securities for its own account. The amount of type I securities that the bank or trust company may deal in, underwrite, purchase and sell is not limited to a specified percentage of its capital stock, surplus fund and undivided profits.

(2) A bank or trust company may deal in, underwrite, purchase and sell type II securities for its own account. The aggregate par value of type II securities issued by any one obligor held by the bank or trust company may not exceed 10 percent of its capital stock, surplus fund and undivided profits.

(e) The authority provided in subdivision (d) of this section shall not limit any other authority contained in the Banking Law or regulations.

(f) Investments made under subdivision (d) of this section shall not be taken into account in computing the limitation on loans to one person contained in section 103 of the Banking Law.

§ 6.8 Overdraft protection charges.

(a) The [superintendent] Superintendent hereby finds that the promulgation of this section is consistent with the policy of the State of New York as declared in section 10 of the New York Banking Law and thereby protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers and is necessary to achieve or maintain parity between banks and trust companies and national banks, and between savings banks and savings and loan associations and Federal savings associations, with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions.

(b) The [superintendent] Superintendent hereby finds that title 12, United States Code, section 24 (seventh) permits national banks to lend money. Title 12, United States Code, section 1464 permits Federal savings associations to accept deposits.

(c) The [superintendent] Superintendent hereby finds that title 12, Code of Federal Regulations, section 7.4002 provides that national banks may impose charges and fees on their customers, and title 12, Code of Federal Regulations, section 557.12(f) allows Federal savings associations to impose charges and fees regardless of any State laws. The Office of the Comptroller of the Currency and the Office of Thrift Supervision, in interpreting these sections, permit national banks and Federal savings associations, respectively, to impose greater daily charges in connection with overdraft protection programs than is otherwise allowed under New York Banking Law for banks and trust companies, savings banks and savings and loan associations. (See Joint Guidance on Overdraft Protection Programs, 70 Federal Register 9127 [February 24, 2005], applicable to banks and trust companies and Guidance on Overdraft Protection Programs, 70 Federal Register 8428 [February 18, 2005], applicable to savings banks and savings and loan associations.)

(d) Notwithstanding any other provision of law or regulation, State-chartered banks and trust companies, and savings banks and savings and loan associations may impose charges, in addition to the charge provided for in section 32.1(a) of this Title, for paying or accepting checks or other written orders drawn on, or effectuating electronic transactions from, accounts containing insufficient funds in cases in which the drawer of the check or other written order, or the account holder seeking to effectuate the electronic transaction, does not have a written agreement for an overdraft line of credit pursuant to section 108(5), 235(8-b) or 380(2) of the Banking Law to the same extent, and subject to the same conditions, as national banks and Federal savings associations, respectively.

(e) Commencing no later than 90 days after the effective date of this subdivision, State-chartered banks and trust companies, savings banks, and savings and loan associations shall provide a separate clear and conspicuous notice to a customer at the time he or she opens an account or to a current accountholder at least once if such account will be subject to charges for covering overdrafts as described in subdivision (d) of this section. Such notice shall provide clear disclosure and explanation of the parameters, costs and limitations of overdraft

protection, including the charges which may be incurred by the customer and how such charges would be calculated.

§ 6.9 Merger of a bank or trust company with a nonbank affiliate.

(a) The [superintendent] Superintendent hereby finds that the promulgation of this section is consistent with the policy of the State of New York as declared in section 10 of the New York Banking Law and thereby protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers and is necessary to achieve or maintain parity between banks and trust companies and national banks with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions.

(b) The superintendent hereby finds that title 12, United States Code, section 215a-3 and title 12, Code of Federal Regulations, section 5.33(g)(4) permit a national bank to merge with one or more nonbank affiliates of such bank.

(c) *Definitions.* For purposes of this section:

(1) *Banking institution* means a banking organization as defined in section 2(11) of the Banking Law, national bank, Federal savings bank, Federal savings and loan association, Federal credit union, foreign banking corporation, or any bank, trust company, savings bank, savings and loan association or credit union organized under the laws of any other state.

(2) *Company* means a corporation, limited liability company, partnership, business trust, association or similar organization.

(3) *Control* shall be deemed to exist when:

(i) one company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company; or

(ii) one company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company;

provided, in either case, that no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity.

(4) *Nonbank affiliate* of a bank or trust company means any company (other than a banking institution) that controls, is controlled by, or is under common control with the bank or trust company.

(5) *Receiving corporation* means the bank or trust company which is to receive into itself the merging affiliate or affiliates.

(d) (1) With the approval of the [superintendent] Superintendent, a bank or trust company may merge with one or more of its nonbank affiliates, with the bank or trust company as the receiving corporation, in accordance with the provisions of this section, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. In determining whether to approve the merger, the superintendent shall consider the purpose of the transaction, its impact the safety and soundness of the bank or trust company, and any effect on the bank or trust company's customers, and may deny the merger if it would have a negative effect in any such respect. The transaction may also be subject to approval by the Federal Deposit Insurance Corporation under the Bank Merger Act, 12 U.S.C. 1828(c).

(2) A bank or trust company entering into the merger shall be subject to the requirements and follow the procedures set forth in section 601 of the Banking Law and the regulations of the Department thereunder as if the nonbank affiliate were a bank or trust company, except as otherwise provided herein.

(3) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(4) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate entering into the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(5) The corporate existence of each entity participating in the merger shall be continued in the receiving corporation, and all the rights, franchises, property, appointments, liabilities and other interest of the participating entities shall be transferred to the receiving corporation, as set forth in section 602 of the Banking Law, in the same manner and to the same extent as in a merger between two corporations subject to the provisions of Article 3 of this Chapter, as if the nonbank affiliate were a bank or trust company.

(e) A merger authorized under subdivision (d) of this section shall not have the effect of enabling a bank or trust company to exercise any right, power, privilege or benefit that it could not lawfully exercise immediately prior to such merger.

(f) The authority provided by subdivision (d) of this section shall not limit any other authority contained in the Banking Law or regulations.

§ 6.10 Investment in a public deposit bank subsidiary by a savings bank or savings and loan association.

(a) The [superintendent] Superintendent hereby finds that the promulgation of this section is consistent with the policy of the State of New York as declared in section 10 of the New York Banking Law and thereby protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers and is necessary to achieve or maintain parity between savings banks and savings and loan associations (hereafter thrift institutions) and Federal savings associations with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions.

(b) The [superintendent] Superintendent hereby finds that title 12, Code of Federal Regulations, section 559(3)(3) and (g), promulgated pursuant to title 12 United States Code, section 1462 et seq., permit a Federal savings association to invest without limitation as to amount in the shares of a subsidiary which is an insured depository institution, including an insured depository institution which may accept deposits of public moneys.

(c) For purposes of this section, public deposit bank subsidiary means a bank as that term is defined in title 12 United States Code, section 1841(c)(1):

(1) more than 50 percent of the voting shares of which are owned, directly or indirectly, by the thrift institution with no other person or entity exercising effective operating control; and

(2) which accepts only deposits of public moneys and the other types of deposits as enumerated in title 12 United States Code, section 1841(a)(5)(E)(ii).

(d) Subject to receipt of any required regulatory approvals, a thrift institution may invest in a public deposit bank subsidiary without limitation as to amount; provided, however, that if such investment would cause the aggregate amount invested by such thrift institution in such subsidiary to exceed one per centum of the assets of such thrift institution, it may do so upon 30 days prior written notice to the [superintendent] Superintendent unless the [superintendent] Superintendent notifies the thrift institution within such 30-day period that:

(1) he or she requires additional time or information in connection with the proposed investment; or

(2) the proposed investment may not be made. The proposed investment must be permitted by the organization certificate of the public deposit bank subsidiary.

3 NY ADC 6.10

3 NY ADC 6.10

2008 WL 75277413

3 NY ADC 6.10

Part 7 (Repealed)

Part 8
Superintendent's Regulations: Banking Development Districts
(Statutory authority: Banking Law, § 96-d)

Sec.
8.1 Explanation; authority
8.2 Definitions
8.3 Criteria for approval
8.4 Required information that must be included in an application to the [superintendent] Superintendent for designation of a proposed banking development district
8.5 Optional information that may be included in an application to the [superintendent] Superintendent for designation of a proposed banking development district
8.6 Other requirements

§ 8.1 Explanation; authority.

The stated purpose of chapter 204 of the Laws of 1997, as amended by chapter 526 of the Laws of 1998, is to encourage the establishment of bank branches in specially designated geographic locations, known as "banking development districts," where there is a demonstrated need for banking services. The establishment of a new branch by a bank, trust company, national bank, or, on and after January 1, 1999, by a savings bank, savings and loan association, Federal savings and loan association or Federal savings bank within such a banking development district should enhance access by consumers to banking services and promote local economic development. Underserved consumers may reside in urban or rural areas which may have different income levels, demographic characteristics and population densities. Regardless of an area's characteristics, it is anticipated that greater access to banking services will encourage the area's residents, who may have no banking relationships, to become part of the financial mainstream. It is further anticipated that the establishment of a bank branch will provide a foundation to stimulate the local economy by enhancing access to capital for local businesses. This will promote long-term economic development, foster job creation, and promote community stabilization and revitalization. As provided in section 96-d(5) of the Banking Law, savings banks and savings and loan associations authorized to participate hereunder, are further authorized to furnish security for any such deposits as they may receive under the banking developments district programs in the manner and to the extent authorized in the case of commercial banks and trust companies under such program.

§ 8.2 Definitions.

For purposes of this Part:
(a) *Bank* shall mean a state commercial bank or trust company, a national bank, savings bank, savings and loan association, Federal savings and loan association or Federal savings bank.
(b) *Alternative providers of banking services* shall mean licensed check cashers, licensed money transmitters, licensed lenders and licensed mortgage bankers.

(c) *Banking services* shall include, but not be limited to, deposit-taking, check-cashing, sale of money orders, origination of residential or commercial mortgages, consumer loans, and commercial loans.
(d) *Branch* shall mean a full-service branch.

§ 8.3 Criteria for approval.

In determining whether to approve an application for the designation of a banking development district, the superintendent shall take into consideration the following criteria:
(a) the location, number, and proximity to applicant's proposed site of sites where banking services are available within the proposed banking development district;
(b) the location, number, and proximity to applicant's proposed site of sites where banking services are available within a reasonable distance of the proposed banking development district;
(c) the identification of consumer needs for banking services within the proposed banking development district;
(d) the economic viability and local credit needs of the community within the proposed banking development district;
(e) the existing commercial development within the proposed banking development district;
(f) the impact additional banking services would have on potential economic development in the proposed banking development district;
(g) the physical size of the proposed banking development district;
(h) the nature of the community to be served, including, but not limited to, the demographic and economic characteristics of the proposed banking development district;
(i) the financial condition and managerial ability of the applicant bank as determined by the appropriate bank regulator or other reliable sources;
(j) compliance with all other applicable branching statutes and regulations;
(k) history of prolonged lack of service to the proposed banking development district; and
(l) such other criteria which the [superintendent] Superintendent, in his or her discretion, shall identify as appropriate.

§ 8.4 Required information that must be included in an application to the[superintendent] Superintendent for designation of a proposed banking development district.

A local government, in conjunction with a bank may submit an application to the [superintendent] Superintendent for the designation of a proposed banking development district. The local government that applies for banking development district designation may be different from the governing board of the municipal corporation which adopts a local law, ordinance or resolution implementing section 105 of the New York Finance Law and section 485-f of the New York Real Property Tax Law. The application shall include the following:
(a) identification of the political subdivision in the State, whether county, town, city, or village, which shall constitute the proposed banking development district;

(b) in those instances in which the proposed banking development district is a portion of a political subdivision, identification of the census tracts as well as street boundaries which shall constitute the proposed banking development district;

(c) evidence of the approval of the application by the governing board of the local government;

(d) characterization of the proposed banking development district as urban or rural as such terms are defined by the United States Census Bureau;

(e) the number of residents of the proposed banking development district;

(f) distribution of banking services--provide, with regard to the following geographic areas:

(1) within the proposed banking development district;

(2) within the entire political subdivision if different from paragraph (1) of this subdivision; and

(3) within a reasonable distance of the proposed banking development district, such distance to be supported by a narrative justification:

(i) the identification and location of all full-service branches of all banking institutions;

(ii) the identification and location of all sites which offer both deposit- taking ATMs and ALMs;

(iii) the identification and location of all alternative providers of banking services;

(iv) the identification and location of deposit-taking ATMs (other than those sited at full-service branches); and

(v) the identification and location of non-deposit-taking ATMs (other than those sited at full-service branches);

(g) income measures, including, but not limited to, per capita annual income and median household annual income of the proposed banking development district utilizing either the most recent United States Census Bureau data or the most recent Department of Housing and Urban Development ("HUD") annual income estimates;

(h) other economic indicators, where readily available, including, but not limited to, unemployment data, percentage of the population at or below the poverty level, percentage of the population at or below 200 percent of the poverty level, and percentage of the population receiving public assistance within the proposed banking development district. Unemployment data may be submitted for a political subdivision in which the proposed banking development district is located;

(i) description of the public transportation systems and major roadways, if any, in the proposed banking development district. Maps and/or diagrams may be included in the description;

(j) narrative establishing that a branch would be economically viable within the proposed banking development district if the statutory economic incentives are provided;

(k) specification of whether the proposed banking development district, or any portion thereof, lies within an area which has been designated as a New York State Empire Zone or Enterprise Community or Federal Empowerment Zone or has received similar designation from any Federal, State, or local government entity;

(l) a narrative description of the natural and man-made geographic barriers, if any, that may impede physical access to existing banking services;

(m) a narrative description of the distances and travel times from the applicant's proposed site to banking institutions and alternative providers of banking services both within the proposed banking development district and within the reasonable distance specified in paragraph (f)(3) of this section;

(n) affirmation by the applicant bank that it will not establish the proposed banking development district branch with the intention of closing or relocating any existing nearby branch or branches; and

(o) such other documents or information as the superintendent, in his or her discretion, may deem necessary.

§ 8.5 Optional information that may be included in an application to the [superintendent] Superintendent **for designation of a proposed banking development district.**

An application for designation of a banking development district may also (and if the [superintendent] Superintendent shall deem such information necessary to a determination, such application shall) include the following:

(a) a narrative description of the population demographics including, but not limited to, the following:

(1) percentage of population age 64 and over;
(2) percentage of population that is non-English speaking;
(3) percentage of population consisting of minorities; and
(4) percentage of population that is disabled;

(b) a narrative description demonstrating coordination of plans for the establishment of the proposed banking development district with other community initiatives;

(c) a narrative description of banking services which are available within the proposed banking development district or a reasonable distance as specified in section 8.4(f)(3) of this Part;

(d) a narrative description of banking services which are not available within the proposed banking development district or a reasonable distance as specified in section 8.4(f)(3) of this Part;

(e) a narrative description of local commercial establishments, including, but not limited to, the number of small, medium, and large businesses located in the proposed banking development district;

(f) a narrative description of significant recent local business developments, including, but not limited to, large corporate restructurings, plant closings, or recent or proposed business openings or expansions; and

(g) indications of community support or opposition for the application, as evidenced by letters from entities such as local chambers of commerce, local businesses, community-based organizations, non-profit organizations, government officials, or community residents.

§ 8.6 Other requirements.

The requirements of this Part are in addition to any requirements established by the Department of Taxation and Finance and the New York State Comptroller with respect to the deposit of public funds and the New York State Board of Real Property Services with respect to real property tax exemptions that may be available to banks within a banking development district.

Part 9
<u>Superintendent's Regulations</u>: Basic Banking Accounts

(Statutory authority: Banking Law, §§ 14[1], 14-f)

Sec.

9.1 State of policy

9.2 Definitions

9.3 Required features

9.4 Conditions for opening or maintaining a basic banking account

9.5 Required disclosures

9.6 Relationship to convenience accounts

9.7 Alternative accounts and banking services

9.8 Cost of the basic banking account

§ 9.1 Statement of policy.

In enacting section three of chapter one of the Laws of 1994, the Legislature has found and declared that certain consumers residing in this State may be unable to afford, without undue financial hardship, the cost of maintaining a consumer transaction account at a banking institution located in this State. Consequently, as provided in section 14-f of the Banking Law, it is the policy of this State that, consistent with safe and sound banking practices, banking institutions shall make available lower cost banking services to consumers, provided that no banking institution shall be required to offer lower cost banking services at a cost to account holders which is less than the actual cost to the banking institution to provide such services.

§ 9.2 Definitions.

For purposes of this Part:

(a) The term *banking institution* shall mean any bank, trust company, savings bank, savings and loan association, or credit union, or branch of a foreign banking corporation the deposits of which are insured by the Federal Deposit Insurance Corporation, which institution is incorporated, chartered, organized or licensed under the laws of this State or any other state or the United States, and which, in the ordinary course of its business, offers consumer transaction accounts to the general public or, in the case of a credit union, to its members.

(b) The term *consumer transaction account* shall mean a demand deposit account, negotiable order of withdrawal account, share draft account or similar account used primarily for personal, family or household purposes.

(c) The term *periodic cycle* shall mean the period covered by the banking institution's regular consumer transaction account statement, which shall be from 28 to 31 days.

(d) The term *withdrawal transaction* shall mean a withdrawal from a consumer transaction account by means of a withdrawal slip, check, negotiable order of withdrawal or draft or through the use of an electronic facility operated by the banking institution.

§ 9.3 Required features.

(a) Subject to the provisions of section 9.6 of this Part, each banking institution shall offer consumer transaction accounts with the following features:

(1) The account shall be identified as a "basic banking account" or, in the case of credit unions, the term "basic share draft account" shall be used.

(2) The initial deposit amount required to open the account shall not exceed $25.

(3) The minimum balance, including any average balance, required to maintain such account shall not exceed $.01.

(4) The charge per periodic cycle for the maintenance of such account shall not exceed $3.

(5) The minimum number of withdrawal transactions which may be made during any periodic cycle at no additional charge to the account holder must be at least eight. For purposes of this paragraph, a withdrawal shall be deemed to be made when recorded on the books of the account holder's banking institution.

(6) Except as provided in paragraph (7) of this subdivision, an account holder shall not be restricted as to the number of deposits which may be made to the account without incurring any additional charge.

(7) The banking institution may charge account holders for transactions at electronic facilities which are not operated by the account holder's banking institution as well as other fees and charges for specific banking services not specified in this Part to the same extent that it charges its regular consumer transaction account holders for such services.

(8) Every periodic statement issued for a basic banking account shall contain, either on the statement or on a separate insert, a conspicuous notice identifying the maximum number of withdrawals which are permitted during each periodic cycle without the imposition of any additional charge, the consequences of exceeding such maximum and the fee, if any, for the use of electronic facilities which are not operated by the account holder's banking institution. Such notice shall in addition indicate that a withdrawal shall be deemed to be made when recorded on the books of the account holder's banking institution which is not necessarily the date that the account holder initiated the transaction.

(b) With regard to those features of the account which are not set forth in subdivision (a) of this section, a basic banking account shall be offered subject to the same rules, conditions and terms which are normally applicable to other consumer transaction accounts offered by the banking institution.

§ 9.4 Conditions for opening or maintaining a basic banking account.

A banking institution may require the following as conditions for opening or maintaining a basic banking account:

(a) that the applicant provide the same information and identification required as in the case of other consumer transaction accounts at that banking institution;

(b) that the account holder be a resident of this State;
(c) that direct deposit to the banking institution be made of recurring payments such as, but not limited to, social security, wage, or pension payments where direct deposit is available to the account holder; and
(d) that the account holder may not maintain any transaction account other than the basic banking account; provided however, that an account holder may continue to maintain one or more other transaction accounts for a reasonable period of time, which shall not be less than 60 days from the date that the basic banking account is opened. This prohibition shall not apply to any transaction account which is a burial fund account that is separately identifiable and monitored as a burial fund account or where the burial fund account is separately identifiable as a contractual funeral agreement pursuant to the terms and conditions of 42 USC 1382b or article 5 of New York's Social Services Law and any regulations promulgated thereunder.

§ 9.5. Required disclosures.

Prior to establishing a basic banking account for an account holder, the banking institution shall furnish a written disclosure to each account holder describing the following features of the basic banking account:

(a) the initial deposit amount, if any, required to open the account;
(b) the minimum balance, if any, required to maintain such account;
(c) the charge per periodic cycle for the use of such account, and the length of the periodic cycle;
(d) the maximum number of withdrawal transactions during any periodic cycle which the account holder may make at no additional charge;
(e) that an account holder may make an unlimited number of deposits without incurring any additional charge;
(f) any charge imposed on transactions made at an electronic facility not operated by the account holder's banking institution;
(g) that a withdrawal shall be deemed to be made when recorded on the books of the account holder's banking institution which is not necessarily the date that the account holder initiated the transaction;
(h) such other fees and charges as may be imposed on the account, e.g., charges levied for dishonored items, certification of checks and check printing; and
(i) such other disclosures as are customarily given in connection with the opening of other consumer transaction accounts offered by the banking institution.

§ 9.6 Relationship to convenience accounts.

If a basic banking account is structured as a convenience account pursuant to the terms and conditions set forth in Part 15 of the General Regulations of the superintendent, then the requirements set forth in section 14-f of the Banking Law shall be applicable only to the owner of the convenience account.

§ 9.7 Alternative accounts and banking services.

(a) A banking institution may submit an application to the[superintendent] Superintendent for approval of an alternative account or other banking services which are at least as advantageous to consumers as the basic banking account.

(b) In the case of alternative accounts, each application for approval shall include, as applicable:

(1) the initial deposit amount, if any, necessary to open the account;

(2) the minimum balance, if any, required to maintain the account;

(3) the average daily balance, if any, required to maintain the account;

(4) the charge per periodic cycle to maintain the account;

(5) the number of allowable withdrawals per periodic cycle without additional charge;

(6) the per-transaction charge per month for transactions in excess of those specified above;

(7) the length of the periodic cycle of the account;

(8) any other fees which may be charged to the account holder; and

(9) such other information and documentation as shall be required by the superintendent.

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(c) In the case of other alternative banking services, each application for approval shall include a complete description of such other banking service to be offered by the banking institution.

(d) In determining whether to approve an alternative account or service, the superintendent shall consider whether the account or service meets the stated purpose of Banking Law, section 14-f to make lower cost banking services available to consumers.

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(e) Provided that the banking institution has submitted an application pursuant to this section prior to the effective date of this Part, any alternative account or other banking service shall be deemed to be in compliance with section 14-f of the Banking Law and this Part pending a written determination to the contrary by the Department. Any banking institution which receives such a determination shall have 60 days in which to demonstrate compliance with section 14-f of the Banking Law and this Part.

§ 9.8 Cost of the basic banking account.

(a) If a banking institution determines that the cost imposed on basic banking account holders is less than the actual cost to the banking institution to provide such account, it may submit an application to the superintendent seeking permission to offer an alternative account or service. Such application shall include the information required in section 9.7(b) of this Part as well as data on the actual cost to the banking institution of providing the basic banking account and a description of the methodology utilized by the banking institution in obtaining such cost data.

(b) In reviewing such application, the [superintendent] Superintendent shall consider whether the methodology utilized by the banking institution is independently verifiable.

Part 10

<u>Superintendent's Regulations:</u> Payment of Interest on Mortgage Escrow Accounts and Insurance Draft Escrow Accounts

(Statutory authority: General Obligations Law, §§ 5-601, 5-602; Banking Law, § 14-b)

Sec.
10.1 Method of computing and crediting interest
10.2 Payment of interest upon sale of mortgage; qualification for exemption

§ 10.1 Method of computing and crediting interest.

(a) The term *mortgage escrow account*, for the purposes of this Part, shall include any account established pursuant to an agreement between a mortgagor and a mortgage investing institution whereby the mortgagor pays to the mortgage investing institution or its designee amounts to be used for the payment of real estate taxes, school taxes, insurance premiums, water rents or any similar charges, except that the term mortgage escrow account shall not be deemed to include payments made to a mortgage investing institution for such purposes which are used to reduce the principal of the mortgage at the time they are received provided that the effective rate of interest thus accorded the mortgagor is no less than the rate of interest established from time to time pursuant to section 5-601 of the General Obligations Law and section 14-b of the Banking Law. The term insurance draft escrow account, for the purposes of this Part, shall include any account established pursuant to an agreement between a mortgagor and a mortgage investing institution whereby the mortgage investing institution receives from an insurance carrier a draft as compensation for damage done to a mortgaged residence.

(b) Interest on a mortgage escrow account as required by section 5-601 of the General Obligations Law and section 14-b of the Banking Law or an insurance draft escrow account as required by section 5-602 of the General Obligations Law and section 14-b of the Banking Law shall be computed on the daily balances in such account from the date the funds are received to the date the funds are disbursed and shall be credited to the escrow account as of the last business day of each quarter of a calendar year or of each quarter of a fiscal year. In computing the interest to be credited, debit balances resulting from advances made by the mortgage investing institution may be taken into account. At least once each year the mortgage investing institution shall render a statement to the mortgagor specifically indicating the interest on the mortgage escrow account or insurance draft escrow account which has been credited during the period covered by such statement.

(c) In the event that a mortgage escrow account or insurance draft escrow account shall be closed or discontinued before the last business day of a calendar quarter, or the last business day of a fiscal quarter, interest shall be computed and credited from the day as of which interest was last credited through the day on which the account is closed or discontinued.

(d) For the purposes of computing interest pursuant to subdivisions (b) and (c) of this section, the mortgage investing institution shall take into account the actual number of days in each quarter, as well as the actual number of days in each calendar year or, may elect to compute

the interest on the basis of a 30- day month and 360-day year.

§ 10.2 Payment of interest upon sale of a mortgage; qualification for exemptions.

(a) *Definitions*. The term maintains, for purposes of section 14-b of the Banking Law and section 5-601 of the General Obligations Law, shall mean maintains itself or through an agent. The term *mortgage investing institution*, for purposes of section 14-b of the Banking Law and section 5-601 of the General Obligations Law, shall mean and include any bank, trust company, national bank, savings bank, savings and loan association, Federal savings and loan association, private banker, credit union, investment company, insurance company, pension fund, mortgage company or other entity which makes, extends or holds a mortgage on any one- to six-family residence occupied by the owner and located in this State, or which makes, extends or holds a mortgage on any property owned by a cooperative apartment corporation as defined in subdivision 12 of section 360 of the Tax Law (as such subdivision was in effect on December 30, 1960), and located in this State, including a governmental or quasi- governmental agency and any institution which has sold or assigned such mortgage if it otherwise continues to service and maintain the escrow account maintained with respect to such mortgage.

(b) In the instance of a mortgage on any property owned by a cooperative apartment corporation, no interest shall be required to be paid on escrow accounts where there is a contract between the mortgagor and the mortgage investing institution, entered into before March 30, 1979, which contains an express disclaimer of an obligation on the part of the mortgage investing institution to pay interest on such accounts.

(c) If a mortgage investing institution sells either a mortgage on a one- to six-family residence occupied by the owner and located in this State, or a mortgage on any property owned by a cooperative apartment corporation as defined in subdivision 12 of section 360 of the Tax Law (as such subdivision was in effect on December 30, 1960), and located in this State to another mortgage investing institution (which may include a governmental or quasi- governmental agency as well as any subsequent purchaser therefrom), the following principles shall apply to the payment of interest on escrow accounts: The mortgage investing institution which owns the mortgage shall be obligated to pay interest on such account, unless such institution is exempt from the requirement to pay interest on such account under proviso (i), (ii) or (iii) of section 14-b(4) of the Banking Law or the provisions of subdivision (b) of this section. In cases where the mortgage investing institution owning the mortgage is exempt from payment of interest on the escrow account by reason of section 14-b(4)(iii), then interest shall be paid by that mortgage investing institution which does in fact have possession of such escrow account, unless such latter institution is expressly prohibited by the applicable servicing contract from earning or receiving a return from the investment of funds of such escrow account. Notwithstanding the foregoing, with respect to any mortgage or class of mortgages, the mortgage investing institution owning a mortgage and the mortgage investing institution having possession of the escrow account may by mutual agreement establish which institution shall pay interest on such account.

(d) The exemption under section 14-b(4)(iii) of the Banking Law shall apply only if:

(1) the date of the servicing contract as well as the mortgage in question predate April 1, 1974; and

(2) the servicing contract expressly precludes the mortgage investing institution owning such mortgage from earning or receiving a return from the investment of funds of such escrow accounts, or if the contract, though silent on the question, effectively does not permit such institution from earning or receiving such return.

(e) No party acquiring a mortgage from or through a party which was not liable to pay interest on escrow accounts may take advantage of a statutory exception available only to such predecessor in interest.

PART 11

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

INSIDER TRANSACTIONS

Statutory authority: Banking Law, § 14(1)(I),

Sec.

11.1 Definitions
11.2 Violations; unauthorized and unsafe banking practices
11.3 Approval and disclosure of insider transactions
11.4 Aggregation of insider transactions
11.5 Information pertaining to insider transactions; files
11.6 Discovery of insider relationship
11.7 Knowledge of proposed insider transaction
11.8 Actions by executive or other committee of banks
11.9 Compliance with other laws and regulations

§ 11.1 **Definitions**

For the purpose of this Part:

(a) The term affiliate shall mean any person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with the person specified.

(b) The term bank shall mean a bank, trust company, savings bank, savings and loan association and credit union.

(c) (1) The term business transaction shall include, but not be limited to, the following types of transactions:

(i) loans or other extensions of credit (including, but not limited to, standby letters of credit and guarantees);

(ii) purchase of assets or services or agreements to purchase assets (including, but not limited to, forward foreign exchange contracts) from the bank;

(iii) sales of assets or services or agreements to sell assets (including, but not limited to, forward

foreign exchange contracts) to the bank;

(iv) use of bank's facilities, its real or personal property, or its personnel;

(v) leases of real or personal property to or from the bank;

(vi) payment of commissions and fees by the bank, including brokerage commissions and management, consultant, architectural, legal and appraisal fees; and

(vii) payments on time deposits or other obligations of the bank by the bank if the payments would result in a yield which is more favorable than for a comparable transaction made in the ordinary course of business to persons not deemed insiders of the bank.

(2) For the purpose of this Part, the term business transaction shall not include (i) deposit account activities, other than those specified in subparagraph (1)(vii) of this subdivision, (ii) safekeeping transactions, (iii) credit card transactions, (iv) trust or fiduciary activities, (v) activities undertaken in the capacity of securities transfer agent, registrar, exchange agent, or in a similar corporate fiduciary capacity, and (vi) activities undertaken as a government or municipal securities dealer.

(d) The term control (including the terms controlling, controlled by, and under common control with) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Occupation of an office or directorship shall not be deemed by itself, to constitute control.

(e) The term insider shall mean:

(1) the chairman of the board of directors, president, executive vice president, secretary and treasurer of a bank;

(2) any other officer or employee of a bank who participates or has authority to participate, otherwise than in the capacity of a director or trustee of the bank, in major policy-making functions of the bank, regardless of whether he or she has an official title or whether his or her title contains a designation of assistant and regardless further, of whether he or she is serving without salary or other compensation;

(3) any director or trustee of a bank; and

(4) any other person who has direct or indirect control over the voting rights of 10 percent of the shares of any class of voting stocks of a bank or otherwise controls the management or policies of a bank.

(f) (1) The term insider transaction shall mean any business transaction or series of related business transactions by, between or on behalf of a bank and:

(i) a insider of the bank;

(ii) a person related to an insider of the bank; or

(iii) any other person where the transaction is made in contemplation of such person becoming an insider of the bank.

The phrase series of related business transactions shall include transactions which are in substance part of an integrated business arrangement or relationship, such as borrowings on a line of credit, recurring transactions of a similar nature within a holding company system, or law firm billings to the bank.

(2) For the purpose of this Part, the term insider transaction shall not include (i) any business transaction between a bank holding company (as defined in the Federal Bank Holding Company Act of 1956 as amended) and one or more of its subsidiary banks or between subsidiary bank of a holding company and any other subsidiary of such company if the terms of the transaction are no less favorable to the bank than the terms which would be available in an arm's length transaction, (ii) any business transaction by a bank which is a member of the Federal Reserve System or is a non-member bank insured by the Federal Deposit Insurance Corporation if the transaction is subject to the requirements and limitations of section 23A of the Federal Reserve Act (12 U.S.C. § 371c), (iii) any business transaction between a bank and its Edge Act subsidiary or a wholly subsidiary of such affiliate, (iv) any business transaction between a bank and an affiliate of the bank engaged solely in holding the bank premises of the bank, in maintaining and operating properties acquired for banking purposes, in mortgage-servicing or in the conduct of a safe-deposit business or the business of an agricultural credit corporation or livestock loan company, or (v) any business transaction between a bank and a wholly owned subsidiary of the bank which is conducted at locations at which the bank is authorized to conduct business and which consists of functions which the bank is empowered to perform directly.

(3) For the purpose of this Part, the term insider transaction shall not include a loan or an extension of credit to an executive officer or a director of a bank made under section 103(8) of the Banking Law and Part 321 of this Title; except that any such loan or extension of credit shall be treated as an insider transaction for the purpose of section 11.4 of this Part.

(g) The term net worth shall mean (1) the aggregate of the capital stock, surplus, undivided profits and contingency reserves of the bank in the case of a bank or trust company, and (2) the excess of assets at book value, less allocated reserves, over known liabilities in the case of a savings bank, savings and loan association or credit union.

(h) The term person shall mean a corporation, partnership, association, or other business entity, any trust or any natural person.

(i) The phrase person related to an insider shall mean:

(1) any corporation or other organization or association in which the insider or any of the persons specified in paragraph (2) of this subdivision are the beneficial owners, either singly or in the aggregate, of 10 percent or more of any class of equity securities or 10 percent of the equity interests;

(2) in the case of a natural person, (i) an insider's spouse, (ii) any relative of the insider or the insider's spouse, if such relative has the same home as the insider, and (iii) an insider's parent, stepparent, child or stepchild; and

(3) any affiliate of the insider.

(j) The term subsidiary shall mean any affiliate of a specified person which is controlled by such person, whether controlled directly or indirectly, through one or more intermediaries.

§ 11.2 **Violations; unauthorized and unsafe banking practices**

Any insider transaction effected in violation of this Part or failure by a bank or an insider to comply with the provisions of this part shall be deemed an unauthorized and unsafe banking practice in the conduct of the business of the bank within the meaning of the Banking Law.

§ 11.3 **Approval and disclosure of insider transactions**

(a) Any insider transaction which, either alone or when aggregated in accordance with section 11.4 of this Part involves assets or services having a fair market value or payments in excess of

the following amounts:

(1) $ 20,000 or one half of one percent of the net worth of the bank, whichever is less, if the total assets of the bank are $ 100,000,000 or less;

(2) $ 50,000 or one half of one percent of the net worth of the bank, whichever is less, if the total assets of the bank are more than $ 100,000,000 and not more than $ 500,000,000;

(3) $ 100,000 or one half of one percent of the net worth of the bank, whichever is less, if the total assets of the bank are more than $ 500,000,000 and not more than $ 1,000,000,000; and

(4) one half of one percent of the net worth of the bank if the total assets of the bank are more than $ 1,000,000,000;

shall be specifically reviewed and approved by the bank's board of directors or board of trustees. Notwithstanding the foregoing, no approval of a separate insider transaction shall be required if the transaction is part of a series of related business transactions involving the same insider and the bank's board of directors or board of trustees has reviewed and approved the entire series of related transactions and the terms and conditions under which such transactions may take place.

(b) The minutes of the meeting at which approval is given shall indicate the nature of the transaction or transactions, the parties to the transaction or transactions, that such review was undertaken and approval given, and the names of individual directors or trustees who voted to approve or disapprove the transaction or transactions. In the case of negative votes, a brief statement of each dissenting director's or trustee's reason for voting to disapprove the proposed insider transaction or transactions shall be include in the minutes if the dissenting director or trustee so requests.

§ 11.4 **Aggregation of insider transactions**

(a) Any loan or extension of credit to or on behalf of an insider of a person related to an insider shall be aggregated with the outstanding balances of (1) all other loans or extensions of credit to the insider, and (2) all other loans or extensions of credit to a person related to that insider, and (3) any loan or extension of credit to any other person where the loan or extension of credit inures to the tangible economic benefit of the insider or person related to the insider.

(b) Any purchase or sale of assets or services to, by, or on behalf of an insider or a person related to an insider shall be aggregated with the fair market value of, or payments made or to

be made for, all other assets or services purchased or sold to, by, or on behalf of (1) such insider, and (2) a person related to that insider and (3) any other person where the purchase or sale inured to the tangible economic benefit of the insider or person related to the insider; provided, however, that such other assets or services shall have been purchased or sold within 12 consecutive months of the purchase or sale in question.

§ 11.5 **Information pertaining to insider transactions; files**

(a) Each bank shall maintain a record of the insider transactions which require review and approval under section 11.3 of this Part in a manner and form that will enable examiner personnel to identify such insider transactions. To comply with the requirements of this provision each bank shall cause each insider thereof to disclose to the bank in writing on or before July first of each year the identity of every person related to an insider within the meaning of such terms insider and person related to an insider as defined in section 11.1(e) and (i) of this Part, and to update such disclosures as circumstances change. Information pertaining to each such insider transaction shall be readily accessible to examiners and shall include all documents and other material relied upon by the board in approving such transaction, including the name of the insider, the position or relationship which causes such person to be considered an insider, the date on which the transaction was approved by the board, the type of insider transaction involved, the relevant terms of the transaction, any other pertinent facts which may serve to explain or support the basis for the board's decision, and any statement submitted for the minutes or the file by directors or trustees who voted not to approve the transaction.

(b) A separate chronological record shall be currently maintained to show the date on which the insider transaction was approved by the board of directors or trustees, the date the transaction was entered into, the name of the insider and the name of the person related to the insider, if the business transaction was with the related person.

§ 11.6 **Discovery of insider relationship**

If a bank becomes aware of the existence of an insider relationship after entering into a transaction for which approval would have been required under section 11.3 of this Part, the bank shall promptly report such transaction to the Superintendent at the address of the Department set forth in section 1.1 of Supervisory Policy G 1, except that no such report need be made by a New York bank other than a credit union if the amount involved is less than $ 5,000 or by a credit union if the amount involved is less than $ 4,000.

§ 11.7 **Knowledge of proposed insider transaction**

Any insider, having knowledge of an insider transaction between the bank and:

(a) that insider;

(b) another insider;

(c) a person related to that insider or such other insider; or

(d) any other person where the transaction inures to the tangible economic benefit of that insider or such other insider, or a person related to that insider;

which is subject to approval and disclosure under section 11.3 of this Part, shall give timely notice of such transaction to the bank's board of directors or trustees.

§ 11.8 **Action by executive or other committee of bank**

Whenever in this Part there is a requirement that action be taken by a board of directors or by a board of trustees, such provision may be complied with by a duly constituted and authorized executive committee of the bank or by any other duly constituted and authorized committee of the bank composed entirely of director or trustees of the bank and having at least five members. In that event, a dissenting member of such committee may note his or her dissent on the minutes of the committee. No member of such committee may vote on any insider transaction which requires the approval of the committee if the transaction involves the member or a person related to the member within the meaning of section 11.1.(i) of this Part.

§ 11.9 **Compliance with other laws and regulations**

Nothing in this Part shall be deemed to modify, amend, or repeal any restriction and limitation imposed by law on an officer, director, trustee or employee of a bank and all such restrictions and limitations shall remain in full force and effect.

PART 12.

TITLE 3. BANKING DEPARTMENT

CHAPTER I. [GENERAL] Superintendent's REGULATIONS [OF THE BANKING BOARD]

ACQUISITION OF RESIDENCES AND SIMILAR FACILITIES BY BANKS AND TRUST COMPANIES

Statutory authority: Banking Law, §§ 14(1)(d), 14(1)(s)-(t), 97(5), 98(1)(d)

Sec.
12.1 Statement of policy
12.2 Limited authorization; delegation
12.3 Annual report

§ 12.1 **Statement of Policy**

The [Banking Board] Superintendent recognizes that banks and trust companies have valid business reasons for acquiring, by purchase, lease or rental, residences and similar or related facilities (including the acquisition of shares together with a lease in the case of cooperative apartment purchases) to house directors, officers and employees under circumstances where arranging for conventional housing is impractical, whether within or without the United States. Such acquisitions would be considered inappropriate by the superintendent, however, if motivated principally by investment objectives.

§ 12.2 **Limited authorization; delegation**

(a) The [Banking Board] Superintendent hereby grants permission to banks and trust companies to acquire any single residence or similar facility within or without the United States, as described in section 12.1 of this Part in an amount not exceeding $ 700,000 or two and one half percent of capital stock, surplus and undivided profits, whichever is greater or lease any single residence or similar facility where total payments over the term of the lease and the term or terms of any renewal option provided in the lease will not exceed $ 700,000 or two and one half percent of capital stock, surplus and undivided profits, whichever is greater. Individual acquisitions or leases exceeding these limits will require prior approval of the superintendent.

(b) All investments by the bank or trust company in such real property, including leasehold improvements and capitalized leases, when added to the amount invested by the bank or trust company pursuant to section 98(1)(a) of the Banking Law, shall not exceed the limitations set forth in section 98(1)(a).

(c) The bank or trust company shall agree in writing that within one year after the cessation of the use of said real property as the residence or similar facility for use of any director, officer or employee of the bank or trust company, it shall dispose of such real property or shall terminate its liability as tenant or sublessee, if applicable, on any leased premises; provided, however, that the Superintendent [of Banks] may, upon a showing of good cause, extend the time within which the bank or trust company must dispose of such real property.

§ 12.3 **Annual report**

Each bank or trust company availing itself of the limited authorization provided in section 12.2 of this Part shall, within one year of the initial acquisition or lease of such property and annually thereafter, as to properties or leases held on the date of such report, provide to the superintendent a list of:

(a) all property purchased or leased under the limited authorization of section 12.2 of this Part which shall, with respect to each such acquisition or lease, include the following:

(1) address of the residence or similar facility;

(2) type of acquisition (e.g., lease or purchase);

(3) reason for acquisition of such real property;

(4) date of purchase of such real property, or date of commencement of the lease and date of its expiration, including description of any renewal rights;

(5) cost of purchase or rental; description of any sale-back, cancellation or similar clauses;

(6) a written assurance in accordance with section 12.2(c) of this Part; and

(7) such additional information or submit such documents, as the [superintendent] Superintendent may require;

(b) all property purchased or leased with specific [superintendent] Superintendent approval under section 98(1)(d) of the Banking Law; and

(c) all property purchased or leased with specific approval of the [superintendent] Superintendent prior to October 15, 1981.

TITLE 3. BANKING DEPARTMENT

CHAPTER I. [GENERAL] Superintendent's REGULATIONS [OF THE BANKING BOARD]

PART 13. DEPOSITOR SAVINGS INFORMATION ("TRUTH-IN-SAVINGS")

Statutory authority: Banking Law, §§ 14(1), 14-c

Sec.

13.1 Definitions
13.2 Distribution of disclosure brochures
13.3 Form of disclosure
13.4 Disclosure of information on savings accounts
13.5 Disclosure of information on time deposits
13.6 Compliance with federal regulation
13.7 Disclosure of information for variable rate deposits or money market deposits

§ 13.1 **Definitions**

As used in this Part:

(a) The term banking organization shall mean all banks, trust companies, savings banks, savings and loan associations, credit unions and insured branches of foreign banking corporations licensed or chartered by the State of New York. An insured branch of a foreign banking corporation is a branch of a foreign banking corporation whose deposits are required to be insured by the Federal Deposit Insurance Corporation.

(b) The term savings account shall mean a deposit accepted by a:

(1) savings bank, in accordance with Banking Law section 245, subdivision 3-a or 3-b;

(2) savings and loan association, in accordance with Banking Law section 378(4) and 12 CFR § 526.1(d), (e) or (1) of the Federal Savings and Loan Insurance Corporation (FSLIC) regulations;

(3) bank or trust company, in accordance with Banking Law section 96(1) and 12 CFR §§ 217.1(e) of the Federal Reserve Board regulations (Regulation Q) or 12 CFR §§ 329.1(e) of the FDIC regulations; and

(4) credit union, in accordance with the provisions of Banking Law section 453(1) (share accounts) and 12 CFR 701.35(1) of the National Credit Union Administration regulations.

(c) The term time deposit shall mean a deposit accepted by a:

(1) savings bank, in accordance with Banking Law, section 234, subdivision 1-a;

(2) savings and loan association, in accordance with Banking Law, section 378-a and 12 CFR 526.1(b) or (c) of the FSLIC regulations;

(3) bank or trust company, in accordance with Banking Law, section 96(1), and 12 CFR 217.1(b), (c) or (d) of the Federal Reserve Board regulations (Regulation Q) or 12 CFR 329.1(b), (c) or (d) of the FDIC regulations; and

(4) credit union, in accordance with Banking Law, section 453(1) share certificate accounts), and 12 CFR 701.35(2) of the National Credit Union Administration regulations.

(d) The terms savings account and time deposit shall not include:

(1) the acceptance of a deposit by a bank or trust company when the amount of such deposit is $ 100,000 or more;

(2) the acceptance of a deposit maintained and payable at a branch of a bank or trust company located outside of the State of New York; or

(3) the acceptance of a deposit from any depositor whose address is outside of the United States. Nonetheless, each banking organization shall provide such depositors with a notice of change in accordance with the provisions of section 13.2(d) of this Part.

(e) The terms interest, dividend and earnings shall mean any amount accruing to or for the account of any depositor(s) in connection with the use of funds deposited in a savings or time deposit account, regardless of whether such earnings have been paid to the account of its holder(s).

(f) Compounding period, expressed as a length of time or a fraction of a year, is the period at the end of which the periodic percentage rate is applied to compute the earnings payable for that period.

(g) The term periodic percentage rate (PPR) shall mean the rate applied at the end of each compounding period to the principal amount for that period to determine the amount of

earnings for that period. The period may be expressed in equal fractional parts of a year or in actual numbers of days even though the compounding period is less than one day. The fractional part of a year may be substituted for the word "periodic" in such manner as "daily percentage rate," "quarterly percentage rate," "annual percentage rate."

(h) The term annual interest rate (AIR) shall mean the annual rate of simple interest whose maximum is prescribed by Federal or State regulations (e.g., FRB Regulation Q, section 217.7, FDIC Regulation sections 329.6 and 329.7, and General Regulation Part 20).

(i) The term annual percentage yield (APY) shall mean a rate expressing the amount of earnings per $ 100 of principal which would accrue in one year as the result of the successive applications of the periodic percentage rate at the end of each period to the sum of the principal amount, plus any earnings credited and not withdrawn during that year.

§ 13.2 **Distribution of disclosure brochures**

(a) Each banking organization shall provide to any potential depositor upon request, and to any depositor at the time of the first deposit of funds into a savings or time deposit account, the information required by this Part. In the case of an account opened by mail, such information shall be provided, by mail or in person, when the depositor receives acknowledgment of the opening of the account.

(b) In order to notify existing depositors of the availability of the disclosure information required by this Part, each banking organization shall either:

(1) prominently post a notice in the lobby of each office of the banking organization located in the State of New York (other than electronic branches);

(2) periodically prominently include a notice in existing advertising or in separate advertising; or

(3) mail a notice to each depositor.

(c) (1) In all future advertising which solicits savings or time deposit accounts, each banking organization shall include a prominently placed notice which shall state that further information about the account may be obtained at any branch of the banking organization or by calling a specified person or department of the banking organization.

(2) Paragraph (1) of this subdivision shall not apply to radio advertisements.

(d) (1) Not more than 10 business days after a banking organization adopts any change in the following, which is less favorable to the depositor:

(i) annual interest rate;

(ii) annual percentage yield;

(iii) periodic percentage rate;

(iv) compounding period;

(v) the frequency of crediting interest;

(vi) grace periods mandated by any regulatory authority; or

(vii) minimum balance requirements mandated by any regulatory authority;

the banking organization shall notify in writing each depositor affected by such change.

(2) Not less than 30 days before a banking organization adopts any change (unless such change is mandated by any regulatory authority) in the grace periods or minimum balance requirements of a savings account, which is less favorable to a depositor, the banking organization shall notify in writing each depositor affected by such change. As to such existing accounts, no such change in the minimum balance requirements or grace periods shall become effective prior to the commencement of an interest or dividend period.

(3) When notice of maturity for a time account is sent to the depositor, the banking organization shall include a statement of any changes in the annual interest rate, annual percentage yield, periodic percentage rate, the compounding period and frequency of crediting interest on a new time deposit having substantially the same terms.

(4) The provisions of paragraphs (1) through (3) of this subdivision do not apply to a savings or time account which is offered at a rate which varies in accordance with market interest rates as long as the underlying formula is not changed by the banking organization (e.g., "money market certificates").

(5) Not less than 30 days before a banking organization elects to convert a passbook or statement savings account paying a fixed annual rate of interest to a savings account paying a

variable rate of interest, the banking organization shall notify in writing each depositor affected by such change. The notice shall clearly describe the change including the banking organization's method of fixing the rate thereafter. The banking organization shall also prominently display a notice describing the change in the lobby of each branch for the 30-day period prior to the change and shall keep such notice posted for a minimum of three months after the change becomes effective. As to existing savings accounts, no such change shall become effective prior to the commencement of an interest period. In the event the savings account is a statement savings account, then the banking organization shall also comply with the notification provisions of section 13.7(d) of this Part.

(e) Written notice of the date on which a time deposit with a term of one year or longer will mature shall be furnished to each depositor not less than 14 and not more than 30 days prior to the expiration of the term of the time deposit.

§ 13.3 **Form of disclosure**

(a) The disclosure required by this Part shall be made clearly, conspicuously, in meaningful sequence, subdivided under descriptive headings and printed in at least eight-point typeface. (Appendix 13 suggests how the required information may be disclosed in a clear, concise and simple form.)

(b) A banking organization may provide the required information in a single, consolidated disclosure document or may provide separate disclosure documents for each type of account.

(c) Banking organizations are encouraged to supplement the narrative statements with illustrations (i.e., give particular examples), tables, charts, drawings or other means which may aid the depositor in comprehending the disclosure information.

(d) The disclosure statement shall provide the name of a person or department or branch that can be contacted in order to answer any questions relating to the disclosure required by this Part.

(e) (1) Each branch of the banking organization (excluding electronic branches and branches located outside of the State of New York) shall have a copy of its interest factor tables which will be available to any depositor in order to verify the interest in his (her) account. (Each branch need only have a copy available for depositor review on the branch premises.)

(2) Paragraph (1) of this subdivision shall not apply to any savings or time account which is offered at a rate which varies in accordance with market interest rates (e.g., the so-called

"money market certificate"). Nevertheless, interest factor tables applicable to a savings or time account which is offered at a rate which varies in accordance with market interest rates must be available at one of the banking organization's offices located in the State of New York.

§ 13.4 **Disclosure of information on savings accounts**

Each banking organization shall disclose the following information on savings accounts, if applicable:

(a) the annual interest rate;

(b) the annual percentage yield;

(c) the compounding period;

(d) the periodic percentage rate paid in each compounding period;

(e) the principal amount to which the periodic percentage rate is applied (e.g., balance at the end of each day, the average balance for the quarter, the low balance for the quarter, etc.), including the following information, if applicable:

(1) if interest is not paid on the 31st day of the month for those months with 31 days;

(2) the time or day the deposit begins to earn interest, if other than the day on which the deposit is made;

(3) the manner in which a withdrawal affects the interest calculation, e.g., Last In First Out (LIFO), First In First Out (FIFO), etc.; and

(4) the manner in which interest is paid on funds which are transferred from one account to another account within the banking organization, if such a transfer is treated differently from any other deposit;

(f) the frequency of crediting interest:

(1) state the periods for which interest is paid (e.g., quarterly, semiannually, etc.);

(2) state the manner in which interest is distributed (e.g., added to the balance, mailed by check, credited to another account);

(g) any delay in crediting a deposited instrument or any delay before a customer may draw against a deposited instrument;

(h) the "grace" periods for deposits and withdrawals:

(1) define the "grace" periods;

(2) state the effect the "10th day" has if it occurs on a nonbusiness day;

(i) minimum balance required to earn interest (e.g., whether there is a minimum balance under which no interest will be paid, or whether earned interest on a DOD/DOW account will be lost if $ 25 is not left in the account until the end of the quarter);

(j) the minimum length of time funds must remain on deposit to earn interest;

(k) whether a withdrawal request can be refused (e.g., privilege to require notice of intent to withdraw as provided by law or regulations);

(l) under what circumstances a service charge may be imposed on a savings account (e.g., any service charge for checks deposited and returned because of insufficient funds or payment stopped; any penalties for closing of the account before a specific date, as in promotional accounts); and

(m) what constitutes an inactive account, any fees levied on inactive accounts, how a depositor can avoid having the account become inactive and how an inactive account can be reinstated as an active account.

§ 13.5 **Disclosure of information on time deposits**

Each banking organization shall disclose the following information on time deposits, if applicable:

(a) the annual interest rate;

(b) the annual percentage yield;

(c) the compounding period;

(d) the periodic percentage rate paid each compounding period;

(e) The principal amount to which the periodic percentage rate is applied, including the following information, if applicable:

(1) if interest is not paid on the 31st day of the month for those months with 31 days;

(2) the time or day the deposit begins to earn interest, if other than the day on which the deposit is made; and

(3) the consequence of a maturity date which falls on a Saturday, Sunday or legal holiday;

(f) The frequency of crediting interest:

(1) state the periods for which interest is paid (e.g., quarterly, semiannually, etc.);

(2) state the manner in which interest is distributed (e.g., added to the balance, mailed by check, credited to another account);

(g) Any delay in crediting a deposited instrument or any delay before a customer may draw against a deposited instrument;

(h) Whether additional deposits can be made to a time deposit after the account is opened (state what effect this has on extending the term);

(i) The banking organization's past policy or practice on withdrawals prior to maturity; the maturity date on which withdrawal is permitted (e.g., the maturity of each deposit is one year from the date of the deposit);

(j) Any penalty which will be imposed for early withdrawal:

(1) state those instances in which no penalty will be imposed;

(2) state any service charges or penalties and whether they are required by the FDIC or other regulatory agency;

(k) The conditions under which interest may be withdrawn with or without penalty or service charge (distinguish between interest earned by the specific account as opposed to interest carried over from another account);

(l) When notice of maturity will be sent to the depositor;

(m) Whether the time deposit will be automatically renewed:

(1) what happens if the banking organization does not offer an automatic renewal option;

(2) if the banking organization does offer the automatic renewal option:

(i) disclose the provisions relating to automatic renewal;

(ii) disclose whether the depositor may accept or decline the automatic renewal feature; and

(iii) indicate what happens if the depositor declines the automatic renewal feature;

(n) What constitutes an inactive account, any fees levied on inactive accounts, how a depositor can avoid having the account become inactive and how an inactive account can be reinstated as an active account; and

(o) Any other fee, charges or penalties imposed on the time account.

§ 13.6 **Compliance with Federal regulation**

Banking organizations which comply with Regulation DD of the Board of Governors of the Federal Reserve System (12 CFR Part 230) issued on September 14, 1992 with respect to consumer accounts shall be deemed to be in compliance with this Part. In addition, a banking organization may satisfy this Part, in the case of business accounts, by providing either a disclosure statement in the form required by 12 CFR 230 or a disclosure statement meeting the requirements of this Part. Those banking organizations which choose to satisfy the requirements of this Part with respect to business accounts by complying with 12 CFR 230, need only comply with those portions of 12 CFR 230 which contain provisions to the same effect as those contained in this Part.

§ 13.7 **Disclosure of information for variable rate deposits or money market deposits**

(a) This section contains the sole informational and disclosure requirements for variable rate

deposits or money market deposits (i.e., savings or time deposits with interest rates which vary during the term or duration of the deposit), to the exclusion of the provisions of sections 13.2 and 13.5 of this Part except as expressly provided herein.

(b) Disclosures for variable rate deposits or money market deposits may be provided in a separate document for each type of account. The following provisions apply:

(1) The disclosures shall contain the items listed in section 13.4 or 13.5 of this Part, to the extent such items are applicable to any specific account, except that:

(i) no reference may be made to a periodic percentage rate;

(ii) no statement may be made of an annual percentage yield unless the statement is accompanied by a disclosure which indicates the hypothetical nature of the yield statement and which discloses the period of time during which the interest rate used to determine the annual yield will remain in effect; and

(iii) only the annual interest rate in effect on the date that the disclosure statement is distributed shall be provided, but the disclosure shall include the date up to which or period for which such rate shall apply and the frequency of rate adjustment thereafter.

(2) The disclosure statement shall identify the index, formula or schedule to be used in calculating rate changes or, if none of the above is applicable, the disclosure shall state so and generally describe the method to be used in calculating the rate changes for the account.

(3) Where the annual interest rate in effect on the date that the disclosure statement is distributed exceeds the rate which would otherwise have applied under the index, formula or other method of interest rate calculation employed by the banking institution, that fact should be clearly disclosed.

(c) The following informational items are required in connection with variable rate deposits or money market deposits:

(1) upon request, the banking institution shall provide the date on which the account started to earn interest and the rate in effect for the account on that date; and

(2) the banking institution shall provide sufficient information to allow the depositor to independently calculate the interest yield on the deposit, based on the history of the account

(e.g., the daily interest rate factor to be applied to the principal amount for each period that a specific rate was in effect and the dates on which accumulated interest was added to principal for purposes of compounding). Such information may be provided in such form as the banking institution shall determine to accomplish the purposes of this provision. Such information must be available from one of the banking institution's offices located in the State of New York, upon written or phoned request.

(d) Included with each regular account statement sent to depositors by a banking institution, either appearing on the statement or a separate sheet, shall be a notice of the annual interest rate or rates in effect during the period covered by the statement and the dates when each such rate was in effect.

TITLE 3. BANKING DEPARTMENT

CHAPTER I. [GENERAL] Superintendent's REGULATIONS [OF THE BANKING BOARD]

PART 14. INVESTMENTS IN CORPORATIONS BY BANKS AND TRUST COMPANIES

Statutory authority: Banking Law, Sections 14(1) and 97(4-a)

Sec.

14.1 Purpose and Scope
14.2 Limitations
14.3 Investment procedures for operating subsidiaries and Edge Act subsidiaries
14.4 Investment procedures for other stock investments

§ 14.1 **Purpose and scope**

Section 97(4-a) of the Banking Law authorizes the [superintendent] Superintendent to adopt regulations to permit banks and trust companies to own or make investments in the stock and other equity of subsidiary corporations engaged in the transaction of any business in which a bank or trust company may engage directly ("operating subsidiaries") and corporations organized pursuant to section 25(a) of the Federal Reserve Act ("Edge Act subsidiaries"). Banks and trust companies may also make investments in the capital stock (which for the purposes of this Part shall be deemed to include contributions to capital surplus) of other corporations if specifically authorized by the superintendent pursuant to section 97(5) of the Banking Law. This Part implements the [superintendent's] Superintendent's authority to authorize investments in operating and Edge Act subsidiaries pursuant to section 97(4-a) and to establish the procedures to make applications to invest in the capital stock of other corporations pursuant to section 97(5).

§ 14.2 **Limitations**

The investment procedures of section 14.3 of this Part are limited to corporations of which a bank or trust company is or will become the owner of at least a majority of the voting stock and which are controlled by no other person.

§ 14.3 **Investment procedures for operating subsidiaries and Edge Act subsidiaries**

(a) Except as provided in subdivisions (b) and (c) of this section, a bank or trust company

which seeks to acquire, establish, make an additional investment (exceeding the lesser of one percent of the bank or trust company's capital stock, surplus fund and undivided profits or five million dollars) in, or perform new activities in an operating subsidiary, or acquire, establish, or make an additional investment in an Edge Act subsidiary, shall submit a notice to the superintendent containing a detailed description of the applicant's investment in the subsidiary (including, but not limited to, the purchase price, whether any shares are to be purchased from officers or executive officers of the bank or trust company, and the identity of any other investors), the activities or proposed activities of the subsidiary, the location of the subsidiary's offices and records, the organizational structure and management of the subsidiary, the relations between the applicant and the subsidiary (including, but not limited to, whether the bank or trust company intends to lend money to or guaranty the obligations of the subsidiary), and any other information the superintendent may request. The investment may be made or the new activity performed 30 days after the [superintendent's] Superintendent's receipt of the notice unless within that 30-day period the [superintendent] Superintendent notifies the bank or trust company in writing that:

(1) it may make the investment or perform the new activity earlier;

(2) it may not make the investment or perform the new activity; or

(3) the [superintendent] Superintendent requires additional time or information. In the event the [superintendent] Superintendent notifies the bank or trust company that he or she requires additional time or information, the bank or trust company may not make the investment or perform the new activity prior to receiving written approval from the superintendent.

(b) A bank or trust company which establishes or makes an additional investment in a subsidiary engaged in, or to be formed to engage in, factoring, personal property leasing, or, in the case of investments in excess of five thousand dollars, the ownership or operation of real or personal property acquired through foreclosure or in settlement or in reduction of debts or obligations to such bank or trust company which were previously contracted in the regular course of its business, or additional investments in operating subsidiaries not reportable under subdivision (a) of this section, shall notify the superintendent within 30 days after the investment is made. The notice shall provide the name of the subsidiary, the location of its head office, and the amount and form of the investment. The bank or trust company also shall provide a certification that the investment was made in conformity with the terms of this Part. No notification shall be required with respect to investments in a subsidiary which shall own or operate real property for use as a bank premises.

(c) A bank or trust company that:

(1) is "adequately capitalized" or "well capitalized" as those terms are defined in Title 12, Code of Federal Regulations*, Part 325;

(2) at its immediately prior examination, had a composite CAMELS rating of 1 (strong) or 2 (satisfactory) under the Uniform Financial Institution Rating System (UFIRS) as those terms are defined in the UFIRS notice in the December 19, 1996 Federal Register* (61 Fed. Reg. 67021); and

(d) The following activities qualify for the preapproved notice procedures under subdivision (c) of this section:

(1) Business services for the bank or trust company and its affiliates: furnishing services for the internal operations of the bank or trust company, or its affiliates, including accounting, auditing, appraising, advertising and public relations, data processing and data transmission services, databases or facilities;

(2) Financial advice and consulting for the bank or its affiliates;

(3) Selling money orders, savings bonds or travelers checks;

(4) Management consulting, operational advice and specialized services for other depository institutions;

(5) Courier services between financial institutions;

(6) Providing check guaranty and verification services;

(7) Data processing and warehousing products, services, and related activities, included associated equipment and technology, for the operating subsidiary, its parent bank and their affiliates;

(8) Acting as investment or financial advisor (not involving the exercise of investment discretion), or providing financial counseling, including:

(i) Serving as the advisory company for a mortgage or real estate investment trust;

(ii) Furnishing general economic information and advice, general economic statistical forecasting services and industry studies;

(iii) Providing financial advice to state or local governments or foreign governments with respect to issuance of securities;

(iv) Providing tax planning and preparation; and

(v) Providing consumer financial counseling;

(9) Providing financial and transactional advice to customers and assisting customers in structuring, arranging and executing various financial transactions (provided that the bank and its affiliates do not participate as a principal), including mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings and financial transactions (including private and public financings and loan syndications); conducting financial feasibility studies; and arranging commercial real estate equity financing;

(10) Investment advice (not involving the exercise of investment discretion) on futures and options on futures;

(d) The following activities qualify for the preapproved notice procedures under subdivision (c) of this section:

(11) making, purchasing, selling, servicing, or warehousing loans or other extensions of credit, or interests therein, for the subsidiary's account, or for the account of others, including consumer loans, credit card loans, commercial loans, residential mortgage loans, and commercial mortgage loans; provided, however, that the preapproved notice procedure set forth in subdivision (c) of this section is not available if the notice involves the direct or indirect acquisition by the bank of any low quality asset from an affiliate in connection with a transaction subject to this section; for purposes of this paragraph, the terms low quality asset and affiliate have the same meaning as provided in section 23A of the Federal Reserve Act (Title 12, United States Code*, § 371c); and

(12) owning, holding, and managing all or part of the parent bank’s investment securities portfolio.

§ 14.4 **Investment procedures for other stock investments**

(a) A bank or trust company which seeks to acquire, establish, make an additional investment

in, or perform new activities in any other corporation (whether or not the bank or trust company will own a majority of its stock) shall submit an application to the [superintendent] Superintendent containing a detailed description of the applicant's investment (including, but not limited to, the purchase price, whether any shares are to be purchased from officers or executive officers of the bank or trust company, and the identity of any other investors), the activities or proposed activities of the corporation, the location of the corporation's offices and records, the organizational structure and management of the corporation, the relations between the applicant and the corporation (including, but not limited to, whether the bank or trust company intends to lend money to or guaranty the obligations of the corporation), and any other information the [superintendent] Superintendent may request. The investment may be made or the new activity performed only upon receipt of [superintendent] Superintendent approval.

(b) A bank or trust company that seeks to make an additional investment in a corporation, the initial investment in which was approved by the superintendent pursuant to subdivision (a) of this section, shall be required to follow only the notice procedures of section 14.3(a) of this Part.

TITLE 3. BANKING DEPARTMENT

CHAPTER I. [GENERAL] Superintendent's REGULATIONS [OF THE BANKING BOARD]

PART 15. JOINT DEPOSITS AND SHARES; CONVENIENCE DEPOSITS AND SHARES

Statutory authority: Banking Law, §§ 14(1), 14-c, 675(c), 678

Sec.

15.1 Definitions
15.2 Requirements to furnish notice
15.3 Disclosures
15.4 Retention of record of disclosures

§ 15.1 **Definitions**

(a) Joint account. For purposes of this Part, a joint account shall mean any deposit of cash (including purchases of shares in the case of mutual savings and loan associations and credit unions), securities or other property made in or with any banking organization or foreign banking corporation transacting business in this State, in the name of the depositor and another person or persons and in form to be paid or delivered to any or the survivor of them.

(b) Owner of a joint account. For purposes of this Part, the owner of a joint account shall refer to the depositor and any other person or persons named on the account.

(c) Convenience account. For purposes of this Part, a convenience account shall mean any deposit of cash (including purchases of shares in the case of mutual savings and loan associations and credit unions), securities or other property made in or with any banking organizations or foreign banking corporation transacting business in this State, in the name of the depositor and another person or persons and in a form to be paid or delivered to any of them "for the convenience" of the depositor without any right of survivorship in the account existing in favor of the other person or persons so named solely by virtue of such account designation.

(d) Owner of a convenience account. For purposes of this Part, the owner of a convenience account shall refer only to the depositor and he or she shall be clearly designated as such on the records of the depositary. In the account title, "FCO" may be used to represent the term "For the Convenience Of" or "For Convenience Only" whichever is appropriate in the context of the account title. The word "owner" need not appear in the account title.

§ 15.2 **Requirement to furnish notice**

(a) Every banking institution referred to in section 15.1 of this Part shall furnish a written

notice to each owner named in every joint account. Such notice shall include, but need not be limited to, the disclosures set forth in section 15.3 of this Part.

(b) Every banking institution referred to in section 15.1 of this Part shall furnish a written notice to the owner and other person or persons named on every convenience account which shall be established or into which funds currently on deposit with the institution shall be transferred or "rolled over" on or after the effective date of this section, which notice shall include, but need not be limited to, the disclosures set forth in section 15.3 of this Part.

§ 15.3 **Disclosures**

(a) Joint Accounts. The notice referred to in section 15.2 of this Part shall reasonably inform the joint owners, in plain language, of the terms and conditions of the account, including the relationship and consequences between the parties in the account and the responsibilities of the depositary with which the account is established. Without limiting the foregoing, such disclosures shall indicate:

(1) that such deposit, and any additions thereto, shall become the property of each owner as joint tenants and, as such, that the depositary may release the entire account to any owner during the lifetime of all owners;

(2) that the depositary may honor checks or orders drawn by, or withdrawal requests from, any owner during the lifetime of all owners;

(3) that the depositary may be required by service of legal process to remit funds held in the joint account to satisfy a judgement entered against, or other valid debt incurred by, any owner of the account;

(4) that the depositary may honor checks or orders drawn by, or withdrawal requests from, the survivor(s) after the death of any owner(s);

(5) the depositary may treat the account as the sole property of the survivor(s) after the death of any owners(s);

(6) unless the depositary receives written notice signed by any owner not to pay or deliver any joint deposit, or addition or accrual thereon, the depositary shall not be liable to any owner for continuing to honor checks or other orders drawn by, or withdrawal requests from, any owner; and

(7) after the receipt of the notice referred to in subdivision (f) of this section, the depositary may require the written authorization of any or all joint owners for any further payments or deliveries.

(b) Convenience accounts. The notice referred to in section 15.2 of this Part shall reasonably

inform the owner, in plain language, of the terms and conditions of the account, including the relationship and consequences between the parties in the account and the responsibilities of the depository with which the account is established. Without limiting the foregoing, such disclosures shall indicate:

(1) that such deposit, and any additions or accruals thereto, is the property of the owner individually and, as such, only the owner may request that the account be closed during the lifetime of the owner;

(2) that the depositary may honor checks or orders drawn by, or withdrawal requests from, the owner or the other named person or persons during the lifetime of the owner even if said checks or orders or withdrawal requests reduce the account balance to zero;

(3) that the depositary may be required by service of legal process to remit funds held in the convenience account to satisfy a judgement entered against, or other valid debt incurred by, the owner of the convenience account but not the other named person or persons except as otherwise ordered by a court of competent jurisdiction;

(4) that prior to receipt by the depositary of written notice of the death of the owner, and for such reasonable period thereafter as shall enable the depositary to act, the depositary may honor checks or orders drawn by, or withdrawal requests from, the other named person or persons after the death of the owner;

(5) that upon the death of the owner and prior to service upon the depositary of a restraining order, injunction or other appropriate process from a court of competent jurisdiction prohibiting payment and for such reasonable period thereafter as shall enable the depositary to comply, the depositary may make payment to the executor, administrator or voluntary administrator as defined in Article 13 of the Surrogate's Court Procedure Act of the deceased owner's estate or to any person designated in section 1310 of the Surrogate's Court Procedure Act;

(6) that the depositary will not treat the account as the property of the other named person or persons during the lifetime of the owner nor after the death of the owner;

(7) that prior to the receipt by the depositary of written notice signed by the owner not to pay or deliver any monies in the account, and for such reasonable period thereafter as shall enable the depositary to act, the depositary shall not be liable to the owner for continuing to honor checks or other orders drawn by, or withdrawal requests from, the other named person or persons; and

(8) after the receipt of the notice referred to in paragraph (7) of this subdivision, the depositary may require the written authorization of the owner for any further payments or deliveries.

(c) Convenience accounts. The other named person or persons shall sign a statement at the

depositary's request agreeing to immediately notify the depositary in writing of the owner's death and acknowledging that the account shall not be used after the owner's death.

§ 15.4 **Retention of record of disclosures**

(a) A record of acknowledgement of the account owner's or owners' receipt of such disclosures, as well as an acknowledgement of receipt of such disclosure by the other person or persons, which acknowledgments may appear on the signature card or on any other form at the discretion of the depositary, shall be maintained by every banking institution referred to in section 15.1 of this Part during the term of each joint or convenience account, and for a period of not less than two years after the termination date of the account.

(b) In the case of joint or convenience accounts opened by mail (including a depositor's return of a newspaper coupon or other marketing device) the depositary shall be deemed to have complied with this section if disclosures are mailed by separate envelope to the owner(s) and to the other person or persons at their addresses in the depositary's records not more than 10 days after establishment of the account, and a record of the mailing date of such notice is maintained as above in the file for each account. For any joint or convenience account opened in the name of an owner who does not appear in person, disclosures shall be sent as if that owner were opening the account by mail.

TITLE 3. BANKING DEPARTMENT

CHAPTER I. [GENERAL] Superintendent's REGULATIONS [OF THE BANKING BOARD]

PART 16. CERTAIN MERGERS AND ACQUISITIONS OF ASSETS INVOLVING BANKING INSTITUTIONS

(Statutory authority: Banking Law, §§ 14, 600(7), 601-a(1) (g))

Sec.

16.1 Definitions
16.2 Scope
16.3 Authorized transactions
16.4 Application and fee

§ 16.1 **Definitions**

For the purposes of this Part:

(a) stock-form thrift institutions shall include both stock-form savings banks and stock-form savings and loan associations organized under New York law;

(b) mutual thrift institutions shall include both mutual savings banks and mutual savings and loan associations organized under New York law;

(c) commercial banks shall include both banks and trust companies organized under New York law;

(d) Federal thrift institutions shall include both federally chartered savings banks and federally chartered savings and loan associations, whether in mutual or stock form; and

(e) investment companies shall have the same meaning as in subdivision 10 of section 2 of the Banking Law.

§ **16.2 Scope**

This Part implements the [Banking Board's] Superintendent's authority to permit mergers and acquisitions of assets not otherwise authorized by the Banking Law between and among banking institutions.

§ 16.3 **Authorized transactions**

(a) The following mergers are hereby authorized:

(1) one or more stock-form thrift institutions with another stock-form thrift institution;

(2) one or more stock-form thrift institutions with one or more commercial banks;

(3) subject to the conditions contained in subdivision (e) of this section, one or more mutual thrift institutions with one or more stockform thrift institutions or commercial banks;

(4) one or more stock-form thrift institutions with one or more Federal thrift institutions or national banks;

(5) subject to the conditions contained in subdivision (e) of this section, one or more mutual thrift institutions with one or more Federal thrift institutions or national banks;

(6) one or more commercial banks with one or more Federal thrift institutions; and

(7) one or more investment companies into a commercial bank or a national bank.

(b) The following acquisitions of all or a substantial part of the assets of banking institutions, whether by purchase or otherwise, other than by merger, are hereby authorized:

(1) one or more stock-form savings banks by a stock-form savings and loan association, mutual thrift institution or commercial bank, and one or more stock-form savings and loan associations by a stock-form savings bank, mutual thrift institution or commercial bank;

(2) one or more mutual savings banks by a mutual savings and loan association, stock-form thrift institution or commercial bank, and one or more mutual savings and loan associations by a mutual savings bank, stock-form thrift institution or commercial bank, provided that acquisitions of all or substantially all of the assets of mutual thrift institutions are subject to the conditions contained in subdivision (e) of this section;

(3) one or more mutual thrift institutions by a Federal thrift institution or national bank, provided that acquisitions of all or substantially all of the assets of mutual thrift institutions are subject to the conditions contained in subdivision (e) of this section;

(4) one or more commercial banks by a stock-form thrift institution or mutual thrift institution;

(5) one or more Federal thrift institutions by a stock-form thrift institution, mutual thrift institution or commercial bank;

(6) one or more national banks by a stock-form thrift institution or mutual thrift institution; and

(7) one or more investment companies by a commercial bank or national bank.

(c) (1) Except as provided in paragraph (2) of this subdivision, any merger of a commercial bank or stock-form thrift institution authorized by this Part shall be approved by the board of directors and stockholders of such institution in accordance with the procedure prescribed in Banking Law, section 601(1)-(2).

(2) In those cases where a mutual thrift institution plans to convert to stock form, and immediately thereafter merge with a stock-form banking institution, the plan of conversion shall contain a full description of the entire transaction. The conversion from mutual to stock form shall, in the case of a supervisory conversion, be approved by the board of trustees, in the case of a savings bank, or the board of directors in the case of a savings and loan association, in the manner prescribed in section 86.12 of this Title; in all other cases, the conversion shall be approved by the board of trustees and depositors, in the case of a savings bank, or the board of directors and shareholders, in the case of a savings and loan association, in the manner prescribed in section 86.4 of this Title. The approval of the plan of conversion by the board of trustees, in the case of a savings bank, or board of directors, in the case of a savings and loan association, of the converting institution shall also constitute the only corporate approval required for any merger described in this paragraph.

(3) Any merger of a mutual thrift institution authorized by this Part shall be approved by the board of trustees in the case of a savings bank, or the board of directors, in the case of a savings and loan association, in accordance with the procedure prescribed in Banking Law, section 601(1) and (3).

(4) Any Federal thrift institution or national bank whose merger into a State-chartered banking institution is authorized by this Part shall submit to the [superintendent] Superintendent a certificate, prepared by an appropriate officer, certifying that all steps have been taken which are necessary under Federal law to merge.

(d) (1) Any acquisition, authorized by this Part, of all or a substantial part of the assets of another banking institution by a commercial bank or stock-form thrift institution, or any disposal, authorized by this Part, of all or a substantial part of the assets of a commercial bank or stock-form thrift institution to another banking institution, shall be approved by the board of directors and the stockholders of such commercial bank or stock-form thrift institution in accordance with the procedure prescribed in Banking Law, section 601-a(2)-(3).

(2) Any acquisition, authorized by this Part, of all or a substantial part of the assets of another banking institution by a mutual thrift institution, or any disposal, authorized by this Part, of all or a substantial part of the assets of a mutual thrift institution, shall be approved by the board of trustees, in the case of a savings bank, or the board of directors, in the case of a savings and loan association, of such mutual thrift institution, in accordance with the procedure prescribed in Banking Law, section 601(1) and (3), for approving mergers.

(3) Any Federal thrift institution or national bank whose disposal of all or a substantial part of its assets to a State-chartered banking institution is authorized by this Part shall submit to the

superintendent a certificate, prepared by an appropriate officer, certifying that all steps have been taken which are necessary under Federal law to the disposal of its assets.

(e) (1) Where the [superintendent] Superintendent has determined that grounds exist for him to take possession of the business and property of a mutual thrift institution, in that such institution:

(i) is or will in the immediate future be unable to meet its obligations;

(ii) is or otherwise would be in an unsafe and unsound condition; or

(iii) cannot with safety and expediency continue business;
he may authorize the institution to merge into, or dispose of all or a substantial part of its assets to, a stock-form thrift institution, commercial bank, federally chartered stock-form thrift institution or national bank, in a transaction in which the mutual thrift institution's depositors or shareholders have no right of approval or right to subscribe for shares to be issued by the surviving institution. In determining whether to authorize such a merger, the [superintendent] Superintendent shall take into consideration the declaration of policy contained in section 10 of the Banking Law.

(2) Notwithstanding paragraph (1) of this subdivision, the superintendent may approve the merger of a mutual savings bank with outstanding certificates representing contributions to its surplus account into a phantom stock-form savings bank if there is compliance with the provisions of sections 86.4 and 86.6 of Part 86 of this Title as if the mutual thrift institution were converting to stock form.

§ 16.4 **Application and fee**

Any application submitted pursuant to the authority of this Part shall be in the form prescribed by Supervisory Procedure CB 105 of this Title, except that the fee accompanying such application shall be in the amount specified in section 1.2 of Supervisory Policy G 1 in the case of a transaction to which one or more of the parties is a stock-form thrift institution. The application should be sent to the division of the Department that supervises the acquiring or receiving institution at the address of the Department set forth in section 1.1 of Supervisory Policy G-1.

Parts 17 and 18 have been repealed

TITLE 3. BANKING DEPARTMENT

CHAPTER I. [GENERAL] Superintendent's REGULATIONS [OF THE BANKING BOARD]

PART 19. INTERNATIONAL BANKING FACILITIES

(Statutory authority: Tax Law, § 1450(c); Banking Law, § 14(1)(s))

Sec.

19.1 Definitions
19.2 Notice of establishment of an IBF
19.3 Recordkeeping and reporting requirements
19.4 Credit information

§ 19.1 Definitions

For purposes of this Part:

(a) The term international banking facility or IBF shall mean a set of asset and liability accounts for international banking facility time deposits and international banking facility extensions of credit and any related accounts, segregated on the books of a banking institution in accordance with the provisions of section 19.3 of this Part.

(b) The term international banking facility time deposit or IBF time deposit shall have the same meaning as in regulations D (12 CFR § 204.8(a)(2)) and Q (12 CFR § 217.1 (1)) of the Board of Governors of the Federal Reserve System.

(c) The term international banking facility extension of credit or IBF extension of credit shall have the same meaning as in regulation D (12 CFR § 204.8(a)(3)) of the Board of Governors of the Federal Reserve System.

(d) The term banking institution shall mean any bank, trust company, private banker, investment company, national banking association or foreign banking corporation licensed pursuant to article V of the New York Banking Law or pursuant to section 4 of the International Banking Act of 1978 (12 U.S.C. § 3102) to maintain a branch or agency in the State of New York, or agreement corporation or edge corporation authorized pursuant to section 25 or section 25(a) of the Federal Reserve Act to maintain a principal office or a branch in the State of New York.

(e) Any term used in this Part and not specifically defined herein shall have the meaning prescribed in the Banking Law.

§ 19.2 Notice of establishment of an IBF

Any banking institution that is required pursuant to regulation D of the Board of Governors of the Federal Reserve System (12 CFR § 204.8(e)) to notify the Federal Reserve Bank of New York of its intention to establish an IBF shall simultaneously submit a copy of such notification to the Superintendent [of Banks]. Any other banking institution authorized by this Part to establish an IBF shall submit to the superintendent a notice of its intention to establish an IBF in a form satisfactory to the Superintendent [of Banks].

§ 19.3 Recordkeeping and reporting requirements

Each banking institution establishing an IBF shall, in connection with its IBF, maintain such books and records in such form as the Superintendent [of Banks] shall prescribe; and shall submit such reports concerning the operations of its IBF as the Superintendent [of Banks] shall prescribe.

§ 19.4 Credit information

Each foreign banking corporation licensed pursuant to article V of the Banking Law to maintain a branch or agency in the State of New York that has established an IBF shall maintain at such branch or agency, credit information sufficient for adequate appraisal of IBF assets.

Part 20 was repealed in 2011.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 21. RESERVES AGAINST COMMERCIAL BANK DEPOSITS

(Statutory authority: Banking Law, §§ 14(1)(j), 167, 202-c)

Sec.

21.1 Statement of policy
21.2 Reserve amounts
21.3 Foreign exclusion

§ 21.1 **Statement of policy**

A covered institution shall mean a depository institution which is required to hold reserves pursuant to the Monetary Control Act of 1980 (Public Law 96-221) and the regulations of the Board of Governors of the Federal Reserve System thereunder. It is the policy of the [Banking Board] Superintendent that, except as otherwise provided hereunder, every bank, trust company, private banker and foreign banking corporation, authorized under State law to maintain a branch or branches in this State, which is not a covered institution, shall maintain reserves at such times and in relation to such deposits and other balances as would be required if such institution were a covered institution. Except as otherwise provided by statute, regulation or order, the [superintendent] Superintendent is authorized, but not required, to construe this Part in such manner as to require institutions to which it applies to conform to the reserve requirements imposed upon covered institutions.

§ 21.2 **Reserve amounts**

Each institution subject to this Part which is not a covered institution shall maintain reserves against deposits and their equivalent (as defined or interpreted by the superintendent, taking into account Federal laws and regulations applicable to reserves of covered institutions) in such amounts as would be required of it if it were a covered institution without regard to any transitional adjustments permitted under the Monetary Control Act, except that the amount of reserves required to be held in respect of net demand deposits (or net transaction accounts, after November 13, 1980) pursuant to this Part shall be one per centum less of such deposits than the amount required to be held by covered institutions.

§ 21.3 **Foreign exclusion**

The provisions of this Part shall not apply to any deposit account or equivalent which is payable only at an office located outside of the United States.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 22. COMMON TRUST FUNDS

Statutory authority: Banking Law, §§ 14(1)(c), 100-c

Sec.
22.1 Plan of operation
22.2 Trust investment committee
22.3 Limitation on participations
22.4 Time of valuation
22.5 Method of valuation
22.6 Basis of admissions and withdrawals
22.7 Distribution of income
22.8 Limitations
22.9 Safekeeping
22.10 Procedure on accountings for liquidating accounts
22.11 Direction of the [Banking Board] Superintendent
22.12 Filing of accounts
22.13 Superintendent to be notified
22.14 Duplicate of accounts to be submitted
22.15 Examination of common trust fund
22.16 Common trust fund restricted to true fiduciary purposes
22.17 Common trust fund to be audited annually
22.18 Inspection of records by persons interested
22.19 Restrictions on ownership of participation by trustee
22.20 Management of common trust fund and fees
22.21 Effect of mistakes
22.22 Compliance with regulations of the Comptroller of the Currency
22.23 Short-term investment common trust funds

§ 22.1 **Plan of operation**

A copy of each plan of operation of a common trust fund and any amendments thereto shall be filed with the superintendent at least 30 days prior to the date on which the plan or amendments thereto become effective. Each trust company acting as trustee of a common trust fund shall make available for inspection by anyone during banking hours, a copy of the plan of operation of such fund with amendments thereto.

§ 22.2 **Trust investment committee**

Responsibility for the management and conduct of each common trust fund shall be vested in a trust investment committee composed of at least three members, who shall be capable and experienced officers or directors of the trust company. This committee shall keep minutes of all its decisions and activities.

§ 22.3 **Limitation on participations**

No account shall participate, or increase its participation, in a common trust fund if by doing so the total investment of that account in such fund would exceed 10 percent of the market value of the fund. For the purpose of this limitation, if two or more accounts are created by the same person or persons and at least one half of the income or principal of each account is payable or applicable to the use of the same person or persons, such accounts shall be considered as one.

§ 22.4 **Time of valuation**

At least once during each three-month period, investments shall be valued by the trust investment committee. The intervals between valuation dates shall be substantially equal. Any valuation shall be filed as a permanent record of the common trust fund within a reasonable period after the valuation date.

§ 22.5 **Method of valuation**

The following method shall be used in the valuation of investments:

(a) Investments shall be valued by reference to appropriate valuations applied by a generally accepted pricing service, or by the methods set forth in this section. All estimates, quotation sheets and valuations used for valuation shall be retained in the records of the common trust fund.

(b) (1) In the case of an obligation of the United States, or of an obligation for which the faith of the United States is pledged for the payment of interest and principal, the trust investment committee may use for the valuation of such investment the means of the most recent dealer bid and asked prices appearing within the five business days next preceding the valuation date in newspapers of general circulation published in the City of New York, in standard financial periodicals or in current dealer communications. Obligations of the United States which may be redeemable at less than par prior to maturity, or which are not saleable without exchange, shall be valued at par.

(2) In the case of a security listed on a national securities exchange registered under section 6 of the Federal Securities Exchange Act of 1934 or on the NASDAQ National Market, the trust investment committee shall use for the valuation thereof the last reported sales price, unless there have been no reported sales within the five business days preceding the valuation date in which event the most recent bid price shall be used. For the purposes of this paragraph, reported sales prices and bid prices shall be those appearing in newspapers of general circulation published in the City of New York, in standard financial periodicals, or on the records of a registered national exchange or the National Association of Securities Dealers. If the trust investment committee believes that the last reported sales price or bid price does not fairly

represent the value of the security, then the committee may, after expressing that view in writing for its records along with the reasons for it, use an alternative, the valuation method in paragraph (3) of this subdivision.

(3) If neither recorded sales nor bid and asked prices are available, and in the case of all investments other than those mentioned above, except investments in mortgages, the trust investment committee shall obtain written estimates of the value of any such investment as of the valuation date from not less than two bankers, brokers, dealers or other persons qualified in the opinion of the trust investment committee to give an opinion as to the value of the investment in question. The average of such estimates shall be used.

(c) For the purposes of this section, a business day shall mean a day when the New York Stock Exchange or the American Stock Exchange is open for business.

(d) In the case of investment in any mortgage at least 50 percent of which is guaranteed pursuant to the provisions of the Act of Congress entitled the "Servicemen's Readjustment Act of 1944," as from time to time amended, and in investments in mortgages insured by the Federal Housing Commissioner, the trust investment committee shall obtain from not less than two bankers, brokers, or other persons qualified in the opinion of the trust investment committee to give an opinion as to the value of the investment in question a written estimate of the value of such investment as of the valuation date. The average of such estimates shall be used and each such estimate shall be retained in the records of the common trust fund.

(e) In the case of investments in other mortgages, the trust investment committee shall secure, prior to any valuation date, from not less than two persons qualified in the opinion of the trust investment committee to give an opinion as to the value of the mortgage in question a written estimate of the value of such mortgage. At least one of the persons making such valuation shall not have participated in the making of the last preceding valuation. The average of such estimates shall be used and each such estimate shall be retained in the records of the common trust fund. Notwithstanding the foregoing, in the event that the trust company shall have in its files such a written estimate of value made within one year of the valuation date, such estimate may be used. The real estate securing each such mortgage investment shall be appraised at least once every three years by two persons, one of whom shall not have participated in the last preceding appraisal of such real estate. Such persons shall be appointed by the trust investment committee and shall, in the opinion of such committee, be familiar with real estate values in the vicinity in which such real estate is situated and qualified to make such appraisals. The persons so appointed shall actually inspect such real estate and shall so certify in a written certificate of appraisal, which shall be filed and preserved in the records of the common trust fund. In preparing a written estimate of the value of any mortgage, due consideration shall be given, by the persons making such valuation, to the last written certificate of appraisal of the property covered by such mortgage.

(f) In the case of a stock where a dividend has been declared but has not been paid and the amount of such dividend has been considered as income under the provisions of the plan of

operation of the common trust fund, the amount of such dividend shall be deducted from the price of the stock in determining its value unless such price shall be an ex-dividend price.

(g) An investment purchased and awaiting payment against delivery shall be included for valuation purposes as as security held, and the cash account shall be adjusted to reflect the purchase price, including brokers' commissions and other expenses incurred in the purchase thereof but not disbursed as of the valuation date.

(h) An investment sold but not delivered pending receipt of proceeds shall be valued at the net sales price.

(i) For the purpose of valuation of an investment, except an investment sold but not delivered, it shall not be necessary to deduct from the value ascertained as provided above brokers' commissions or other expenses which would be incurred upon a sale thereof.

§ 22.6 **Basis of admissions and withdrawals**

For the purpose of admissions to and withdrawals from the common trust, fund, the principal of the fund shall be determined by adding to the value of the investments, as determined in accordance with the provisions of sections 22.4 and 22.5 of this Part, the uninvested cash principal and other items of principal, and by deducting from the total thereof any liabilities, due or accrued, chargeable to principal. For the purpose of computing the value per unit, the principal thus determined shall be divided by the number of existing units and such unit value together with a sum equal to the proportionate share of any income held or accrued and remaining undistributed at the valuation date shall be the basis for admissions to and withdrawals from the common trust fund. In determining the value of a unit, fractions less than .01 percent of the original unit value may be omitted. No participation shall be admitted to or withdrawn from a common trust fund except on the basis of such valuation. A reasonable period, not to exceed five bank business days, following the completion of each valuation may be used to make the computations necessary to determine the value of the fund and of the participations therein. No participation shall be admitted to or withdrawn from a common trust fund unless a written request for or notice of intention of taking such action shall have been entered in the records of the trust company and approved by the trust investment committee.

§ 22.7 **Distribution of income**

The income of a common trust fund shall be computed on the accrual basis and the apportionment of income shall be determined at each valuation date. The income shall be distributed to participating estates, trusts or funds not less frequently than quarter-annually, either on the basis of income accrued or on the basis of income actually received. To facilitate the distribution of accrued but uncollected income, the cash principal of the common trust fund may be used, to the extent necessary to purchase income accrued.

§ 22.8 **Limitations**

No investment for a common trust fund shall be made in stocks, bonds or other obligations of any one person, firm or corporation if as a result of such investment the total amount invested in stocks, bonds or other obligations issued or guaranteed by such person, firm or corporation would aggregate in excess of 10 percent of the then market value of the fund, provided that this limitation shall not apply to investments in direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest.

§ 22.9 **Safekeeping**

(a) Approval of the [superintendent] Superintendent must be obtained for the deposit of securities investments of a common trust fund with a securities depository, clearing agency, or bank subject to the laws of a jurisdiction outside the United States of America. The superintendent may approve a depository for this purpose or he may approve of a trust company choosing such depositories if the trust company's procedures warrant his confidence that the depositories chosen would be acceptable. The [superintendent] Superintendent may also approve the use of subcustodians by such depositories.

(b) In deciding whether to grant approvals under subdivision (a) of this section, the [superintendent] Superintendent, and trust companies given approval to choose their own depositories, shall consider the country risk of the jurisdiction where the depository is located, the legal protection given foreign securities depositories by the laws of that jurisdiction, the need for the services offered by the depository, the financial condition of the depository, the capabilities of the depository's management, and the insurance protecting the securities depositor in the event of the loss of securities. The trust company shall remain liable for the safekeeping of securities investments of its common trust funds, wherever held.

(c) Unless waived by the [superintendent] Superintendent on the basis of the factors listed under subdivision (b) of this section, the custody agreement between the trust company and the depository shall provide that:

(1) the depository holds the security as agent for the trust company;

(2) the securities will not be subject to any claim of any kind in favor of the depository, except a claim for payment for safe custody or administration of the securities;

(3) beneficial ownership of the securities will be freely transferable without payment other than for safe custody or administration of the securities;

(4) adequate records will be maintained by the depository identifying the securities as being owned by the trust company as a fiduciary;

(5) the superintendent and the trust company's independent accountants will be afforded

access to the records maintained, and the securities held, by the depository;

(6) the depository will periodically furnish detailed, current reports to the trust company with respect to the securities.

§ 22.10 **Procedure on accountings for liquidating accounts**

For the purpose of subsequent admissions to and withdrawals from the common trust fund, the value of any investment transferred to a liquidating account shall be excluded. The trust company shall include in any subsequent accounting for the common trust fund an accounting for each liquidating account established in connection with such common trust fund.

§ 22.11 **Direction of [Banking Board] Superintendent**

The [Banking Board] Superintendent, may direct that:

(a) a trust company file on account of proceedings covering a period less than 10 years, in accordance with subsection 100-c(6) of the Banking Law;

(b) any common trust fund be terminated; or

(c) the audit specified by section 22.17 of this Part be performed by a Certified Public Accountant.

§ 22.12 **Filing of accounts**

An account of proceedings, as specified under Banking Law, subsection 100-c(6), shall be filed within six months of the close of the period covered by the account.

§ 22.13 **Superintendent to be notified**

Whenever an account of proceedings is to cover a period of less than 10 years, the [superintendent] Superintendent shall be notified at least one month prior to the close of the accounting period.

§ 22.14 **Duplicate of accounts to be submitted**

Within five days of the filing in court of an account of proceedings, two copies of the account certified by a principal officer of the trust company shall be submitted to the superintendent.

§ 22.15 **Examination of common trust fund**

The superintendent shall cause an examination to be made of the investments held by a trust

company for a common trust fund as of the close of the period covered by an account of proceedings, and on or before the return date of the citation or notice, shall certify in writing to the court in which the accounting proceeding is pending whether the investments reported in such account as of the closing date of such account were in the custody of the trust company at such date. Where securities of a common trust fund have been deposited: (a) with a clearing corporation pursuant to EPTL 11-1.9; (b) with a Federal reserve bank pursuant to EPTL 11-1.8; or (c) with a securities depository, clearing agency, or bank, whether or not subject to the laws of a jurisdiction other than the United States of America, or any state or subdivision thereof, the [superintendent] Superintendent may rely on such an examination upon the written certification of such clearing corporation, Federal reserve bank, securities depository, clearing agency or bank that such securities were so deposited by such trust company with such clearing corporation, Federal reserve bank, securities depository, clearing agency or bank from the account of such trust company. Where securities of a common trust fund have been deposited through a subcustodian with a clearing corporation pursuant to EPTL 11-1.9 or with a Federal reserve bank pursuant to EPTL 11-1.8, the [superintendent] Superintendent may rely in such examination upon the written certification of such subcustodian that such securities were deposited by such trust company with such subcustodian and were in turn deposited by such subcustodian with such clearing corporation or Federal reserve bank. The trust company shall pay to the [superintendent] Superintendent his reasonable expenses incurred in making such examination and certification, and such payment shall be a charge against the principal of such common trust fund.

§ 22.16 **Common trust funds restricted to true fiduciary purposes**

Common trust funds which are established pursuant to Banking Law, section 100-c, may be operated only for true fiduciary purposes. The trust investment committee shall not permit any funds of any trust to be invested in any such common trust fund if it has reason to believe that such trust was not created or is not being used for true fiduciary purposes. A trust company administering a common trust fund shall not, in soliciting business or otherwise, publish or make representations which are inconsistent with this section or the other provisions of this Part and, subject to the applicable requirements of law, shall not advertise or publicize the earnings realized on any common trust fund or the value of the assets thereof, provided that nothing herein shall be construed to prohibit a trust company from advertising in accordance with the rules and regulations of the Comptroller of the Currency regarding the maintenance of common trust funds.

§ 22.17 **Common trust funds to be audited annually**

(a) A trust company administering a common trust fund shall, once during each 12-month period, or at such interval as the Superintendent may determine, cause an audit to be made of the common trust fund by auditors responsible only to the board of directors of the trust company. The report of such audit shall include a list of the investment comprising the common trust fund at the time of the audit which shall show the valuation placed on each item on such list by the trust investment committee as of the date of the audit, a statement of purchases,

sales and any other investment changes and of income and disbursements since the last audit, and appropriate comments as to any investments in default as to payment of principal or interest. The reasonable expenses of any such audit made by independent public accountants may be charged to the common trust fund.

(b) The trust company shall, without charge, send a copy of such audit annually to each person to whom a regular periodic accounting of the estates, trust or funds participating in the common trust fund ordinarily would be rendered or shall send advice to each such person annually that the report is available and that a copy will be furnished without charge upon request. Except as may be required by law, the trust company, shall not publish or authorize the publication of any such report or the information contained therein and each copy furnished to any person as herein provided must bear a statement to the effect that the publication of such copy or the information contained therein is unauthorized, except that such publication in accordance with the rules and regulations of the Comptroller of the Currency regarding the maintenance of common trust funds is permitted.

§ § 22.18 **Inspection of records by persons interested**

All accounting records, registers of participations, periodic statements, audits under the plan, and liquidating accounting records, pertaining to a common trust fund for the period subsequent to that covered by the last judicial account therefor shall be subject to inspection, during bank business hours for a period of one month following each valuation date by any adult and competent person, by the guardian of an infant and by the committee of an incompetent when it appears that the adult competent person, the infant or the incompetent is a person interested in a participating estate, trust or fund.

§ 22.19 **Restrictions on ownership of participations by trustee**

A trust company administering a common trust fund shall not:

(a) have any interest in such fund other than in its fiduciary capacity; or

(b) make any loans on the security of a participation in such fund.

If because of a creditor relationship or otherwise the trust company acquires an interest in a participation in such fund the participation shall be withdrawn on the first date on which such withdrawal can be effected. However, in no case shall an unsecured advance to an account holding a participation until the time of the next withdrawal be deemed to constitute the acquisition of an interest by the trust company.

§ 22.20 **Management of common trust fund and fees**

A trust company administering a common trust fund shall have the exclusive management thereof and shall not charge a fee for the management of the common trust fund, or receive,

either from the common trust fund or from any estates, trusts or funds, the funds of which are invested in participations therein, any additional fees, commissions, or compensations of any kind by reason of such participation. The trust company shall not pay a fee, commission, or compensation out of the common trust fund for management. Nothing in this section shall be construed as prohibiting a trust company from reimbursing itself out of a common trust fund for such reasonable expenses incurred by it in the administration thereof as would have been chargeable to the respective participating estates, trusts, or funds if incurred in the separate administration of such participating estates, trusts or funds. The cost of printing, publication and distribution of the annual audit report referred to in section 22.17 of this Part shall be borne by the trust company.

§ 22.21 **Effect of mistakes**

No mistake made in good faith and despite the exercise of due care in connection with the administration of a common trust fund shall be deemed to be a violation of this Part if after the discovery of the mistake the trust company takes promptly whatever action may be practicable in the circumstances to remedy the mistake.

§ 22.22 **Compliance with regulations of the Comptroller of the Currency**

Nothing in this Part shall be construed to prohibit trust companies from taking action or refraining from action as required by the rules and regulations, prevailing from time to time of the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

§ 22.23 **Short-term investment common trust funds**

(a) Notwithstanding anything contained in section 22.5 of this Part to the contrary, all investments of a short-term investment common trust fund may be valued:

(1) by reference to appropriate valuations applied by a generally accepted pricing service; or

(2) at cost, if the plan of operation of such fund requires that:

(i) the type or category of investment of the fund shall comply with the rules and regulations of the Comptroller of the Currency pertaining to short-term investment funds, as in effect from time to time; and

(ii) in computing income, the difference between cost of investment and anticipated receipt on maturity of investment shall be accrued on a straight line basis.

(b) A participation may be admitted to, or withdrawn from, a short-term investment common trust fund at any time in the discretion of the trust company without regard to the notice requirements of section 22.6 of this Part for admissions and withdrawals.

(c) Notwithstanding any provision of section 22.6 of this Part to the contrary, the plan of operation of a short-term investment common trust fund may provide for purposes of admission and withdrawal of participations that the principal of the fund shall be determined by adding to value of the investments, as determined in accordance with the provisions of subdivision (a) of this section, the uninvested cash principal and other items of principal, and by deducting from the total thereof any liabilities, due or accrued, chargeable principal. For the purpose of computing the value per unit, the principal thus determined shall be divided by the number of existing units and such unit valued together with a sum equal to the proportionate share of any income held or accrued and remaining undistributed at the time of valuation less the amount of income payable to unit holders accrued from the last income payment date may be the basis for admissions to and withdrawals from the short-term investment common trust fund. In determining the value of a unit, fractions less than .01 percent of the original unit value may be omitted, and any proportionate share of income attributable to a unit of the short-term investment common trust fund may be determined in accordance with the provisions of paragraph (d)(1) or (2) of this section.

(d) Notwithstanding any provisions of section 22.7 of this Part to the contrary, the plan of operation of a short-term investment common trust fund may provide that for purposes of distributing income:

(1) the net income of each unit of a short-term investment common trust fund shall be determined daily on, or within a reasonable period after, each bank business day by dividing the net income of the short-term investment common trust fund by the number of units into which it is then divided, and as soon as practicable after the last calendar day of each month the net income of each unit during that month shall be distributed to the participating trust, estate or fund to which that unit is or was allocated on the day the net income was determined. If income has been accrued and distributed to a participating trust, estate or fund but has not actually been collected by the trust company at the time fixed for its payment, the trust company in its discretion may charge back to and collect from the participating trust, estate or fund the amount of the income so distributed or credited; or

(2) the net income of each unit of a short-term investment common trust fund shall be determined as of the last calendar day of each month, and within a reasonable period thereafter, by employing the dollar-day method, the total units of participation in the fund, as of the beginning of each day of the month, shall be aggregated for the entire monthly period, and the total number of month-units so calculated shall be divided into the total amount of net income of the fund for the month, which shall be the income earned and collected in the fund, or accrued on the investment held in the fund, as of the last day of the month, for the entire month, as reduced by all liabilities, expenses or other charges, due to accrued, chargeable to income. The net income per month-unit so calculated shall be termed the dollar-day value for each unit held on each day of the month involved. Each participant shall be entitled to a monthly income payment based on the aggregate number of month-units that participant held in the fund (computed by aggregating the units held in the fund by the participant as of the

beginning of each day of the month, for all of the days that the participant held units of the fund during the month) multiplied by the unit dollar-day value so determined, and such payment shall be distributed to each participant as soon as practicable after the last calendar day of each month. If income has been accrued and distributed to a participating trust, estate or fund but has not actually been collected by the trust company at the time fixed for its payment, the trust company in its discretion may charge back to and collect from the participating trust, estate or fund the amount of income so distributed or credited.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 23. CALL REPORTS

Statutory authority: Banking Law, §§ 14(1)(l), 37(1)

§ 23.1 **Call reports**

Section 14(1)(l) of the Banking Law empowers the [Banking Board] Superintendent to prescribe the form and contents of periodical reports of condition to be rendered to the superintendent by banks, trust companies and private bankers. A periodical report of condition shall be deemed rendered to the [superintendent] Superintendent if the [superintendent] Superintendent shall have such access as he or she deems appropriate at either the principal office of the bank or trust company or through the facilities of the Federal Deposit Insurance Corporation or Federal Reserve Board, as the case may be, to such reports of condition as have been rendered to the Federal Deposit Insurance Corporation or the Federal Reserve Board, as the case may be, in compliance with their rules and regulations. With respect to reports of banks and trust companies not otherwise reporting to the Federal Reserve or FDIC, such reports shall be rendered to the [superintendent] Superintendent.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 24. ANNUAL FINANCIAL STATEMENTS OF COMMERCIAL BANKS, TRUST COMPANIES, STOCK FORM SAVINGS BANKS AND STOCK FORM SAVINGS AND LOANS

Statutory authority: Banking Law, §§ 10, 14 (l)(m)

Sec.
24.1 Annual report
24.2 Exemptions
24.3 Comparative statements
24.4 Inspections

§ 24.1 **Annual reports**

For each fiscal year beginning on or after January 1, 1968, every commercial bank, trust company, stock form savings bank and stock form savings and loan association shall mail an annual report prepared in conformity with generally accepted accounting principles to each of its stockholders at least five days before the bank's annual meeting. Four copies of such report shall be filed at the same time with the [superintendent] Superintendent at his New York City office.

§ 24.2 **Exemptions**

A commercial bank shall not be subject to the requirements of this Part if

(a) it has 500 or more stockholders and files with the [superintendent] Superintendent at his New York City office four copies of the annual financial statements required to be filed by such bank with the Board of Governors of the Federal Reserve System or four copies of the annual financial statements required to be filed by such bank with the Federal Deposit Insurance Corporation in accordance with part 335 of title 12 of the regulations of such corporation; or

(b) all of its voting securities, excepting only directors' qualifying shares, are owned, controlled or held with power to vote by a bank holding company as defined in Banking Law, section 141, or by a single corporation; or

(c) all of its voting securities, excepting only directors' qualifying shares, are owned, controlled or held with power to vote by one or more banks, one or more corporations, or a combination of one or more banks and one or more corporations, organized under the laws of a foreign country; or

(d) it is a trust company all of the capital stock of which is owned by 20 or more savings banks.

§ 24.3 **Comparative statements**

The annual report to stockholders required by section 24.1 of this Part shall be completed on a comparative year basis with figures shown both for the fiscal year covered by the report and for the preceding year, provided that in the first report mailed to stockholders and filed with the [superintendent] Superintendent pursuant to this Part, only figures for the fiscal year covered by the report need be included.

§ 24.4 **Inspection**

The information filed pursuant to the requirements of this Part will be available for public inspection during business hours (a) in the case of all commercial banks at the New York City office of the department, and (b), in addition, in the case of commercial banks headquartered outside New York City and Nassau, Suffolk, Westchester and Rockland Counties, at the appropriate upstate examination district office of the department, i.e., Albany, Syracuse, Rochester and Buffalo.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 25. MEETINGS OF STOCKHOLDERS OF CERTAIN COMMERCIAL BANKS

Statutory authority: Banking Law, §§ 10, 14(1)(p)

Sec.
25.1 Findings of [Banking Board] Superintendent
25.2 Prior approval of notice to stockholders
25.3 Criteria for approval
25.4 Time limitations

§ 25.1 **Findings of [Banking Board] Superintendent**

The superintendent hereby finds:

(a) that the policy of this State to protect the public interest and the interests of stockholders of a corporate banking organization requires that there be full disclosure to its stockholders of the material and significant facts relating to the management and condition of the banking organization necessary to enable an intelligent and responsible vote in the election of directors;

(b) that the policy of this State to protect the public interest and the interests of depositors, creditors and stockholders of a corporate banking organization may, on the other hand, require that there not be full disclosure that the superintendent has issued an order to such banking organization pursuant to Banking Law, section 39, or full disclosure of the results of any examination or investigation upon which it is based because full disclosure in either case might tend to undermine public confidence in such banking organization;

(c) that compliance with the requirement of Banking Law, section 6002, that each corporate banking organization hold a stockholders' meeting for the election of directors within the first four months of its calendar year may precipitate an irreconcilable conflict between the policies described in findings (a) and (b) above; and

(d) that such a conflict would constitute an unusual and extraordinary circumstance necessitating a variation from the requirements of Banking Law, section 6002.

§ 25.2 **Prior approval of notice to stockholders**

For the reasons stated in section 25.1 of this Part, the [Banking Board] Superintendent, whenever an order has been issued to any bank or trust company pursuant to Banking Law, section 39, in his or her discretion, may require such corporate banking organization to submit to him or her, for his or her prior approval, any proposed notice to stockholders of any meeting

of stockholders to be held within two years after the date of issuance of such order, any solicitation of proxies for such meeting and any other communication to stockholders concerning such meeting (all hereinafter included in the term "notice to stockholders").

§ 25.3 **Criteria for approval**

In determining whether or not to approve any proposed notice to stockholders, the superintendent shall take into consideration the nature of the order issued pursuant to Banking Law, section 39, the condition of such corporate banking organization, and the results of any examination or investigation of such corporate banking organization which he or she has caused to be made. In no event shall the [superintendent] Superintendent approve any proposed notice to stockholders unless it shall be found that full disclosure can be made to stockholders while, at the same time, protecting the public interest and the interests of depositors, creditors and stockholders.

§ 25.4 **Time limitations**

No notice to stockholders which requires the approval of the [superintendent] Superintendent under this Part shall be communicated to stockholders until it has been approved, in writing, by the [superintendent] Superintendent. If any such proposed notice to stockholders is approved by the superintendent prior to August 1 of any calendar year, the corporate banking organization affected shall proceed forthwith to hold a meeting for the election of directors and the transaction of other business within two months following the date of such approval, and such meeting of stockholders shall be deemed to have been held in compliance with the requirements of Banking Law, section 6002(2). If no proposed notice to stockholders is approved prior to August 1 of any calendar year, the requirements of such section 6002(2) shall not apply for that calendar year.

TITLE 3. BANKING [DEPARTMENT] Division
CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 26. STOCK OPTIONS

Statutory authority: Banking Law, § 140-a

GENERAL PROVISIONS

Sec.

GENERAL PROVISIONS
26.1 Definitions
26.2 Requirement of [superintendent's] Superintendent's approval
26.3 Preliminary approval
26.4 Final approval
26.5 Notice to stockholders
26.6 Amendment to plan or options

PROVSIONS OF PLAN
26.10 Granting commissions
26.11 Option pricing
26.12 Additional mandatory provisions
26.13 Permissive provisions
26.14 Voidability of plans and options

§ 26.1 **Definitions**

As used in this Part the term:

(a) bank means a bank or trust company;

(b) option means the right of an individual (optionee) to purchase from a bank shares of the bank's authorized and unissued capital stock by virtue of an offer by the bank continuing for a stated period of time to sell such shares at a stipulated price, such individual being under no obligation to purchase; and

(c) plan means the document setting forth the terms and conditions under which a bank may grant stock options to its directors, officers and employees.

§ 26.2 **Requirement of [superintendent's] Superintendent's approval**

No option granted by any bank shall become effective and no shares shall be issued or purchased pursuant to any plan until the [superintendent] Superintendent has given final approval to such plan upon application therefor.

§ 26.3 **Preliminary approval**

(a) Following adoption of a plan by its board of directors, a bank may submit to the superintendent an application for preliminary approval of such plan. The application, to be submitted in triplicate, shall consist of:

(1) a copy of the plan;

(2) a certified copy of the resolution of the board of directors adopting the plan;

(3) drafts or printer's proofs of resolutions to be submitted to a stockholder's meeting:

(i) authorizing adoption of the plan; and

(ii) authorizing any appropriate amendments to the bank's organization certificate with regard to any increase in capital stock or other matters;

(4) drafts or printer's proofs of the proposed certificate of amendment;

(5) an opinion of the bank's counsel that the provisions of the plan will permit compliance with the provisions of this Part;

(6) proposed proxy materials; and

(7) such other documents or information as the superintendent may require.

(b) The [superintendent] Superintendent shall approve or disapprove in writing such application for preliminary approval.

(c) In the event the [superintendent] Superintendent approves such application, the plan may be submitted to the stockholders of the bank.

§ 26.4 **Final approval**

(a) Following approval by the holders of a majority of the outstanding shares of capital stock of the bank and following the expiration of a 20-day period from the date notice of the stockholder's meeting was mailed to stockholders, the bank may submit to the superintendent an application for final approval of the plan. The application, to be submitted in triplicate, shall consist of:

(1) a certified copy of the resolution of the stockholders adopting the plan and approving any appropriate amendments to the bank's organization certificate;

(2) a sworn statement of the bank's president, secretary or cashier setting forth the votes cast

for and against the plan, and stating whether any stockholders have demanded payment for their shares and if so, the number of shares for which payment has been demanded; and

(3) such other documents or information as the [superintendent] Superintendent may require.

(b) The [superintendent] Superintendent shall approve or disapprove in writing such application.

§ 26.5 **Notice to stockholders**

The following information shall accompany the notice given to stockholders of the stockholders' meeting to be held for the purpose of approving a plan:

(a) a copy of the plan;

(b) comparative earnings statements of the bank, in tabular form, for each of the last five calendar years and for the current year, inclusive of the quarterly period preceding such notice;

(c) comparative balance sheets of the bank, in tabular form, for each of the last five calendar years and for the current year, inclusive of the quarterly period preceding such notice;

(d) the current annual compensation of each of the bank's two highest paid officers and the current annual aggregate compensation of all the bank's officers;

(e) any options previously granted by the bank to its officers or employees;

(f) a statement to the effect that the [superintendent's] Superintendent's preliminary review of the plan implies neither approval nor disapproval of the plan's contents;

(g) such other information as may be required by the superintendent; and

(h) such other information as may be required by applicable law or regulation.

§ 26.6 **Amendments to plan or options**

(a) Except as provided in subdivision (b) of this section, no amendment to a plan shall become effective until such amendment has been adopted by the bank's board of directors, and approved by the holders of a majority of the outstanding shares of the capital stock of the bank and by the superintendent in accordance with the procedures set forth in sections 26.3 and 26.4 of this Part.

(b) Stockholder approval of the proposed amendment shall not be required if the plan contains a provision similar to that permitted under section 26.13(a)(8) of this Part, the proposed amendment is not one of those specified in subparagraphs (i) through (v) thereof and the

proposed amendment does not require an amendment of the bank's organization certificate. In such event, following adoption of the amendment by its board of directors, a bank shall submit to the superintendent an application for approval of the amendment, and no such amendment shall become effective until the superintendent's approval is granted. The application, to be submitted in triplicate, shall consist of:

(1) a copy of the amendment;

(2) a certified copy of the resolution of the board of directors adopting the amendment;

(3) an opinion of the bank's counsel that the provisions of the plan, as amended, will permit compliance with the provisions of this Part; and

(4) such other documents or information as the [superintendent] Superintendent may require. The superintendent shall approve or disapprove in writing such application.

(c) Options may be amended only in accordance with the plan pursuant to which they are granted.

PROVISIONS OF PLAN

§ 26.10 **Granting committee**

The plan shall provide that options shall be granted only by (or upon recommendation of) a committee elected by the bank's board of directors. However, with respect to participation by directors, the plan shall provide that options shall be granted by (or only in accordance with the recommendations of) a committee elected by the bank's board of directors, none of the members of which committee shall be under consideration for a grant of options at the time such committee acts, or in accordance with the plan if the plan specifies the number of options which will be granted to directors.

§ 26.11 **Option pricing**

The plan shall provide that options may be granted at not less than 100% of the fair market value of the shares covered by such option on the date the option is granted. If a realistic and fair market value of such shares is not readily determinable, an estimate of the fair market value shall be made and options may be granted at not less than this figure and in such case the plan shall set forth in detail the method to be employed in estimating fair market value. Among the factors which should be considered in such estimates are:

(a) the market value of the shares of comparable banks; and

(b) the trend of the bank's earnings.

§ 26.12 **Additional mandatory provisions**

The plan shall provide:

(a) a general statement of the purposes of the plan;

(b) that the plan is subject to the provisions of the Banking Law, section 140-a, the regulations of the superintendent and any other applicable law or regulation;

(c) the total number of shares as to which options may be granted, which number may, however, be subject to adjustment as provided in section 26.13(a)(7) of this Part;

(d) the period of time for which the plan shall be in effect;

(e) that options granted thereunder shall not extend beyond a period of 10 years or such shorter period as the plan may provide;

(f) that an optionee may not sell within a specified period shares which he has purchased pursuant to option (unless the superintendent shall waive, in writing, the requirement for such a provision);

(g) that no options shall be assignable or transferable except by will or by the laws of descent and distribution;

(h) that the terms and conditions of options shall be set forth or incorporated by reference in the instruments evidencing such options.

§ 26.13 **Permissive provisions**

(a) The plan may include:

(1) a limitation upon the number of shares which may be optioned to any single individual;

(2) a limitation to the effect that an optionee may exercise an option only while in the employ of the bank or within three months after leaving such employment;

(3) a limitation to the effect that an option may not be exercised more than two years after the death of the optionee;

(4) a limitation upon the times during a year when options may be exercised;

(5) a limitation upon the portion of an optionee's options which may be exercised in any one year;

(6) an age limitation upon the persons who may be granted options;

(7) a provision which would permit a bank's board of directors, subject only to the superintendent's approval, to make appropriate adjustments in the total number of shares as to which options may be granted, the number of shares which may be optioned to any single individual, the number of shares optioned under any option, and the option price under any option, to reflect any stock dividend, stock split or share combination duly effectuated by the bank; and

(8) a provision which would permit a bank's board of directors to amend the plan, subject only to the superintendent's approval; provided, however, that the approval of the holders of a majority of the bank's outstanding capital stock shall be required for any amendment (other than an adjustment made pursuant to paragraph [7] of this subdivision) which would:

(i) increase the number of shares as to which options may be granted;

(ii) change the number of shares which may be optioned to any single individual;

(iii) decrease an option price;

(iv) extend the term of the plan or of an option; or

(v) change the persons or category of persons eligible to be granted options.

(b) The foregoing provisions are not intended to be inclusive of all provision

§ 26.14 **Voidability of plans and options**

If the superintendent shall find at any time that there has been, with respect to any plan approved by him, any violation of any of the provisions of Banking Law, section 140-a, of this Part, or of the plan, he may declare such plan or any option granted thereunder null and void, and in such event shall so advise the bank and, if appropriate, the optionee, by official communications stating the grounds for such declaration, and specifying the action, if any, to be taken by such bank or optionee to effectuate or carry out such declaration. The superintendent may advise the bank and, if appropriate, the optionee, of the action, if any, to be taken by such bank or optionee to cure the defect.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 27. CAPITAL NOTES AND DEBENTURES AS CAPITAL STOCK

Statutory authority: Banking Law, § 14(1)(b)

Sec.
27.1 Capital notes and debentures as capital stock

§ 27.1 Capital notes and debentures as capital stock

Every capital note or debenture issued by a bank or trust company and authorized by the superintendent in accordance with section 96(4) of the Banking Law and Supervisory Procedure CB 111, shall be in all respects considered and treated as a share of capital stock having a par value equal to the face amount of such note or debenture, for purposes of Banking Law, sections 97, 98(1)(a) and (1)(e), 103(1), 106, 121, 7001 and 7002.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]
PART 28. IMPLEMENTATION OF BANKING LAW, SECTION 103
Statutory authority: Banking Law, §§ 103(1)(a), (c), (i), 103(4)

Sec.
28.1 Designation of departments, agencies and instrumentalities of the United States and the State of New York
28.2 Designation of public benefit corporations
28.3 Designation of rated investment securities
28.4 Designation of international lending facilities
28.5 The New York City Community Preservation Corporation

§ 28.1 **Designation of departments, agencies and instrumentalities of the United States and the State of New York**

Pursuant to Banking Law, section 103.1(a), the [Banking Board] Superintendent hereby designates:

(a) Departments, agencies and instrumentalities of the United States.

(1) Export-Import Bank of Washington;

(2) Economic Development Administration, but only to the extent that such administration has agreed to pay the principal and interest of a loan or extension of credit, or has guaranteed payment (by guaranty or commitment to purchase or otherwise, of such principal and interest;

(3) Commodity Credit Corporation, but only to the extent that a loan or extension of credit is secured or covered by a guaranty, or by a commitment or agreement to take over or to purchase, made by such corporation, and such guaranty, agreement or commitment is unconditional and must be performed by payment of cash or its equivalent within 60 days after demand;

(4) Any guaranteeing agency designated or authorized by the President under section 301 or 302 of the Defense Production Act of 1950, as amended (50 App. U.S.C.A. § § 2091, 2092), and any Federal Reserve Bank acting on behalf of any such agency, but only to the extent such agency or bank has guaranteed a loan or extension of credit (by commitment to purchase, agreement to share losses, or otherwise) against loss of principal and interest, or has made a commitment to make such guaranty.

(b) Departments, agencies and instrumentalities of the State of New York. The Municipal Assistance Corporation for the City of New York, provided that such corporation has agreed to pay the principal and interest on a loan or extension of credit, or has guaranteed payment (by

guaranty or commitment to purchase or otherwise) of such principal and interest, or is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest.

§ 28.2 **Designation of public benefit corporations**

Pursuant to Banking Law, section 103(1)(c), the [Banking Board] Superintendent hereby designates the New York State Housing Finance Agency and the Metropolitan Transportation Authority, as public benefit corporations to which any bank or trust company may make loans equal but not exceeding 25 percent of the capital stock, surplus fund and undivided profits of such bank or trust company.

§ 28.3 **Designation of rated investment securities**

The superintendent hereby designates as independent rating services for the purposes of Banking Law, section 103(1)(i), Moody's Investors Service, Inc., Standard & Poor's Corporation, and Fitch Investors Service Inc.

§ § 28.4 **Designation of international lending facilities**

Pursuant to Banking Law, section 103(1)(c), the [Banking Board]hereby designates Asian Development Bank, African Development Bank, the International Bank for Reconstruction and Development, and the International American Development Bank as international lending facilities.

§ 28.5 **The New York City Community Preservation Corporation**

The limitations and restrictions of Banking Law, section 103(4), shall not apply to collateral trust notes issued by the The New York City Community Preservation Corporation which notes have been issued pursuant to, and have terms substantially similar to those set forth in an indenture that shall have received the prior specific approval of the [superintendent] Superintendent or to the mortgages or other liens securing said notes.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 29. DECLARATION OF DIVIDENDS

Statutory authority: Banking Law, § 14(1)

Sec.
29.1 Background
29.2 Computation of net profits
29.3 Transition

§ 29.1 **Background**

Banking Law, section 112 authorizes banks and trust companies to declare dividends in a calendar year without having obtained the prior approval of the superintendent out of net profits for that calendar year together with retained net profits for the immediately preceding two calendar years. The Department formerly has computed "net profits" by adding back to net income any provision made for loan losses and deducting any net losses charged to the loan loss reserve. This procedure is inconsistent with the recognition of losses under generally accepted accounting principles ("GAAP").

§ 29.2 **Computation of net profits**

A bank or trust company must reduce net profits at the time a provision for loan losses is made rather than when any net losses are charged to the loan loss reserve. Accordingly, net profits of a bank or trust company will equal its net income for purposes of Banking Law, section 112.

§ 29.3 **Transition**

A bank or trust company must use Section 29.2 of this Part to compute net profits for all calendar years beginning on and after January 1, 1991 and may use Section 29.2 of this Part for all calendar years beginning on and after January 1, 1990. Whether using Section 29.2 of this Part for the computation of net profits on or after January 1, 1990 or January 1, 1991, a bank or trust company may recompute retained net profits for one or both of the two calendar years immediately preceding 1990 or 1991, as the case may be, using Section 29.2 of this Part. Once a bank or trust company has elected to compute net profits or retained net profits for a particular calendar year using Section 29.2 of this Part, net profits or retained net profits for all subsequent calendar years must also be computed using Section 29.2 of this Part. If a bank or trust company has elected to use Section 29.2 of this Part to compute net profits or retained net profits for a particular calendar year, it must thereafter use Section 29.2 of this Part to compute retained net profits for that calendar year.

TITLE 3. BANKING DEPARTMENT

CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 30. INSIDERS' REPORTS

Statutory authority: Banking Law, § 130(7)

Sec.
30.1 General requirements
30.2 Definitions
30.3 Exemptions
30.4 Inspections

§ 30.1 **General requirement**

Initial statements of, and statements of changes in, the beneficial ownership of equity securities of a bank or trust company required to be filed with the [superintendent] Superintendent pursuant to Banking Law, section 130(7), should be prepared and filed in accordance with the instructions contained on Department Forms BO-1 and BO-2, respectively.

§ 30.2 **Definitions**

For the purposes of this Part, the term officer means a chairman of the board of directors, vice chairman of the board, chairman of the executive committee, president, vice president (except as indicated in the next sentence), cashier, treasurer, secretary, comptroller, and any other person who participates in major policymaking functions. In some institutions (particularly banks or trust companies with officers bearing titles such as executive vice president, senior vice president, or first vice president as well as a number of "vice presidents"), some or all "vice presidents" do not participate in major policymaking functions, and such persons are not officers for the purpose of this Part.

§ 30.3 **Exemption**

An officer who owns no equity securities of the bank or trust company of which he is an officer shall be exempt from the requirements of this Part.

§ 30.4 **Inspection**

The information filed pursuant to the requirements of this Part will be available for public inspection and copying during business hours at the address of the Department set forth in section 1.1 of Supervisory Policy G 1.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 31. INVESTMENTS OF BANKS OR TRUST COMPANIES IN CERTAIN CORPORATIONS

Statutory authority: Banking Law, §§ 14(1)(d), 97(5)

Sec.

31.1 Federal national Mortgage Association; Government National Mortgage Association
31.2 The Depository Trust Company
31.3 Distribution by Small Business Investment Company of New York, Inc. of stock held in portfolio
31.4 Student Loan Marketing Association
31.5 Capital Housing Rehabilitation Corp.
31.6 Battery Park City Authority
31.7 Minbanc Capital Corp.
31.8 Federal Agricultural Mortgage Corporation
31.9 Government Securities Clearing Corporation
31.10 Participants
31.11 Euro-clear Clearance System S.C.
31.12 Federal Home Loan Bank of New York
31.13 Atlantic Central Bankers' Bank

§ 31.1 Federal National Mortgage Association; Government National Mortgage Association

The superintendent hereby authorizes any bank or trust company which sells or assigns mortgages which it owns to the Federal National Mortgage Association (FNMA), or the Government National Mortgage Association (GNMA) to invest in and hold the stock of FNMA and GNMA which it acquires in connection with making such sale or assignment effective and to do any and all other acts which under the laws and regulations applicable to such sales may be required to effect such sales.

§ 31.2 The Depository Trust Company

Any bank or trust company is permitted to invest in or hold shares of common stock of Depository Trust & Clearing Corporation, the principal function of which is to serve as the holding company for the Depository Trust Company and the National Securities Clearing Corporation

§ 31.3 Distributions by Small Business Investment Company of New York, Inc of stock held in its portfolio.

Banks and trust companies holding stock in Small Business Investment Company of New York, Inc. are authorized to hold stock, received from Small Business Investment Company of New York, Inc. as a distribution from its portfolio, for a period not exceeding two years from the date of receipt of any such portfolio stock.

§ 31.4 Student Loan Marketing Association

Any bank or trust company is permitted to invest in and hold shares of stock of the Student Loan Marketing Association. Any bank or trust company is further permitted to act as underwriter for such stock, unless the Board of Governors of the Federal Reserve System determines that such stock is not eligible for underwriting by banks under title 12 of the United States Code. Such investment, holding, or underwriting by any bank or trust company shall not exceed in total amount two percent of the capital stock and surplus of such bank or trust company.

§ 31.5 Capital Housing Rehabilitation Corp

Any bank or trust company is permitted to invest in shares of common stock of Capital Housing Rehabilitation Corp. in a total amount not to exceed two percent of the investing bank's or trust company's capital stock and surplus.

§ 31.6 Battery Park City Authority

Any bank or trust company is permitted to invest in a partnership, limited partnership, or joint venture formed pursuant to section 3937(a) or 3937(c) of title 42, U.S.C.A., for the purpose of undertaking, assisting in or otherwise concerned with projects designated by the Battery Park City Authority, a New York public benefit corporation, in connection with the development of Battery Park City; provided, however, that the total cost of investments made under this section shall not exceed two percent of the investing bank's or trust company's capital stock and surplus.

§ 31.7 Minbanc Capital Corp

Any bank or trust company is permitted to invest in shares of common stock, par value $ 1 per share, of Minbanc Capital Corp., a closed-end investment company, incorporated in Delaware, in a total amount not to exceed two percent of the investing bank's or trust company's capital stock and surplus.

§ 31.8 Federal Agricultural Mortgage Corporation

Any bank or trust company is permitted to invest in shares of common stock, of Federal Agricultural Mortgage Corporation, a corporation established under title VII of the Agricultural Credit Act of 1987, in a total amount not to exceed two percent of the investing bank's or trust company's capital stock and surplus

§ 31.9 Government Securities Clearing Corporation

Any bank or trust company is permitted to invest in the capital stock of Government Securities Clearing Corporation in a total amount not to exceed the lesser of $ 250,000 or two percent of the investing bank's or trust company's capital stock and surplus.

§ 31.10 Participants Trust Company

Any bank or trust company is permitted to invest in or hold shares of Participants Trust Company.

§ 31.11 Euro-clear Clearance System S.C

Any bank or trust company is permitted to invest in or hold one membership share in Euro-clear Clearance System S.C.

§ 31.12 Federal Home Loan Bank of New York

Any bank or trust company is permitted to invest in shares of common stock of the Federal Home Loan Bank of New York.

§ 31.13 Atlantic Central Bankers Bank

Any bank or trust company is permitted to make an investment in the common stock of the Atlantic Central Bankers Bank not to exceed the minimum number of shares of such stock required to become a member of such bankers' bank and thereafter may increase such investment upon the written approval of the [superintendent] Superintendent, provided that such approval shall be given only upon a finding that such investment is consistent with the declaration of policy set forth in section 10 of the Banking Law. In no instance shall the aggregate investment by any bank or trust company in the Atlantic Central Bankers Bank exceed 10 percent of the bank or trust company's capital stock, surplus fund and undivided profits, or exceed 5 percent of any class of voting securities of such bankers' bank.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 32. MAXIMUM CHARGES FOR PAYMENTS MADE AGAINST INSUFFICIENT FUNDS, UNCOLLECTED BALANCES AND RETURN ITEMS; CERTAIN DISCLOSURES

Statutory authority: Banking Law, §§ 14(1); 108(8), 202(8), 235-c, 383(13)

Sec.

32.1 Maximum charges
32.2 Charges imposed in connection with overdraft items
32.3 Lesser charges
32.4 Required disclosures

§ 32.1 Maximum charges

(a) Insufficient funds. The establishment of charges that are imposed by a bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation (collectively for purposes of this part a "banking institution") in connection with a check drawn or other written order upon, or electronic transfer sought to be effectuated against, insufficient funds or uncollected balances, irrespective of whether the check, order or electronic transaction (collectively for purposes of this part an "item") is paid, accepted or returned by the banking institution, is a business decision to be made by each banking institution, in its discretion, according to sound banking judgement and safe and sound banking principles. A banking institution shall be deemed to have reasonably established such charges if it considered the following factors, among others:

(1) the cost incurred by the banking institution, plus a profit margin, in providing the service;

(2) the deterrence of misuse by customers of banking services;

(3) the enhancement of the competitive position of the banking institution in accordance with its marketing strategy; and

(4) the maintenance of the safety and soundness of the banking institution.

In establishing charges under this subdivision, a banking institution may consider the nature of the account and may determine to establish different charges for an account that is opened and maintained primarily for personal, household or family purposes than for an account that is not, and, in determining such charges, may also consider whether the item is to be paid,

accepted or returned.

(b) Return items. The maximum charge which may be imposed by a bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation in connection with a check or other written order received by it for deposit or collection and subsequently dishonored and returned for any reason by the drawee is $ 10.

§ 32.2 Charges imposed in connection with overdraft items

No bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation shall, in connection with the payment, acceptance or return of such check or order, impose any fee, fine, commission or other charge, however designated, in addition to the maximum charge established by section 32.1 of this Part, except that nothing in this Part expressed shall prevent a bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation from taking, receiving, reserving or charging interest, as authorized by law in connection with credit extended in connection with the payment of such check or order, or from imposing any charge in accordance with a written agreement established as provided by sections 108(5), 235(8-b), 235-c, 380-g, 380-i and 202(8) of the Banking Law.

§ 32.3 Lesser charges

A bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation may, as an accommodation to its customers, pay, accept, or return a check or order without charge or at a lesser charge than the maximum charge established by the superintendent.

§ 32.4 Required disclosures

In addition to any disclosure required by Part 13 of the General Regulations of the [Banking Board] Superintendent with regard to consumer deposit accounts, a banking institution shall disclose in writing to its depositors the order in which it pays items drawn against a depositor's account. By way of illustration, and without limitation, such disclosure may inform the depositor that the banking institution pays the largest items first, the smallest items first, or by the number of the item or in the order received. Such disclosure shall be given to the depositor at the time the account is opened and 30 days prior to the time the payment policy is changed. For existing accounts, such disclosure shall be provided within 120 days of the effective date of this section.

TITLE 3. BANKING [DEPARTMENT]DIVISION

CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 33. VARIABLE RATE CLOSED-END PERSONAL LOANS

Statutory authority: Banking Law, §§ 108(4), 202(9), 235(8-b), 352(a), 380-i

Sec.

33.1 Scope
33.2 Disclosures
33.3 The index
33.4 Generally accepted actuarial methods
33.5 Notifications
33.6 Grouping of loans
33.7 Balloon payment; refinancing
33.8 Compliance with Federal regulation

§ 33.1 Scope

This Part governs personal loans made at a variable rate of interest by banks, trust companies, branches of foreign banking corporations which are authorized to maintain a personal loan department, savings banks, savings and loan associations, credit unions and licensed lenders ("lending institutions") pursuant to the statutory authority cited above. Loans subject to this Part are to be treated as separate and apart from loans made pursuant to the provisions of Part 80 of this Title. The use of indices for loans subject to this Part must comply with the provisions of Part 333 of this Title.

§ 33.2 Disclosures

All disclosures required under this Part are to be made in a single, separate document, in plain language and with captioned subdivisions for the information to be disclosed. Such disclosures shall be provided by the lending institution to the person who is to be primarily liable on the loan, prior to the consummation of the loan. Disclosure shall be made, in any reasonable order, of the following information:

(a) the identification of the index to be used by the lending institution in connection with varying the rate for the loan and where the index figures are available;

(b) the circumstances under which the rate for the loan may vary, including disclosures of the intervals at which the lending institution may change the rate on the loan, the time(s) or date(s) at which the lending institution calculates the rate with respect to the index, and any conditions or events on which the changes in rate are contingent;

(c) the effect or the combination of effects that an increase in the rate on the loan may have on

the amount of the monthly payment, or the number of monthly payments or the amount of the final payment;

(d) a hypothetical example, illustrative of the type of credit being offered, of the effect or the combination of effects of a rate increase on the amount of the monthly payment, or the number of monthly payments or the amount of the final payment;

(e) the history of the movements in the index selected for the loan, as further provided under section 33.3 of this Part;

(f) the fact the the borrower will receive prior notification from the lending institution of increases in the rate or changes in the terms of payment, and the time periods within which such notifications will be sent;

(g) any limitations provided by contract with respect to the amount of any increase in the rate or the extent of all increases in the rate over the life of the loan and if the lending institution establishes ceilings or floors (i.e., "caps") beyond which rate changes will not be made, a statement of such limits and the manner in which they will function; and

(h) the option which will be available to the borrower in the event that the requirements of section 33.7 of this Part apply with respect to the final payment on the loan.

§ 33.3 The index

(a) General provisions. Lending institutions may use any single index from among the indices approved by the [superintendent] Superintendent pursuant to Part 333 of this Title on the terms stated therein. The loan rates may be based directly on the index values, may be based upon the index values plus or minus additional percentage points, or may be separately established and stated; provided, however, that variations in the rates shall correspond directly to the movements of the index. While only a single index shall be used for the life of a loan, the lending institution may provide for the use of a substitute index similar to the initial index in the event that the initial index should become unavailable during the term of the loan. This Part imposes no requirement on lending institutions to place limitations on the adjustment in the loan rate, as such adjustment would otherwise be allowed by movements in the index. Interest rate adjustments may be rounded, as determined by the lending institution, to the nearest percentage point or fraction thereof, provided that rounding applies equally to decreases and increases in rates. Subject to the rounding provisions, increases in the index need not be reflected on each adjustment date but may be accumulated to the next adjustment date, but decreases in the index must be reflected on each adjustment date.

(b) Information and disclosures with respect to the history of the index. The disclosure shall identify the index and shall contain a statement that past changes in the index are not

necessarily predictive of future changes in the index. The lending institution shall provide the high and low figures for the index and the dates at which these levels were reached, for each of the three calendar years preceding the calendar year in which the loan is made. In addition, if a loan is made after August 31st of any calendar year, the disclosure shall include the high and low figures for the index's performance through June 30th of that year, and such disclosure may be used as the disclosure of the high and low in index performance for the calendar year next preceding the calendar year in which the loan is made, for any loan made prior to March 1st of a calendar year.

§ 33.4 Generally accepted actuarial methods

The term generally accepted actuarial method, as such term is used in section 1 and following of chapter 296 of the Laws of 1983, means any generally accepted actuarial method (e.g., the United States Rule method), but does not include any method which results or may result in the addition of unpaid interest amounts to the outstanding principal balance of the loan.

§ 33.5 Notifications

The notification referred to in section 33.2 (f) of this Part shall be delivered or mailed by the lending institution to the person who is primarily liable on the loan, no less than 25 days nor more than 60 days prior to the effective date of a rate increase or change in payment terms. The notice should indicate the new rate and, if applicable, the new payment amount.

§ 33.6 Grouping of loans

If a lending institution adjusts the rate of interest charged on loans on common adjustment dates (such as the first day of January, April, July and October, or less frequently) rather than adjusting the rate of interest on an individual quarterly (or less frequent) interval measured from the date of the loan, the lending institution may on any common adjustment date increase the rate of interest charged on a loan made within 25 days before that common adjustment date only if prior to the consummation of the loan the lending institution provides notice of the increase and the new rate of interest to the person who is to be primarily liable on the loan. In no case may the rate be adjusted more than once within any three-month period.

§ 33.7 Balloon payments; refinancing

In the case of any loan made pursuant to this Part which is repaid according to equal monthly payments and which will result in a balloon payment as the final payment, the lending institution shall give prior notice to the person primarily liable on the loan, within the time periods provided for notifications under section 33.5 of this Part, of the borrower's option

either to pay the entire amount of the balloon payment or to request in writing, and upon request to receive a refinancing, of any amount remaining unpaid after the final regular payment. For purposes of this section, a balloon payment means any payment which is two times or more the amount of an equal monthly payment. For purposes of this Part, the amount refinanced shall be deemed a new loan. The same index, the terms, conditions and requirements applicable to the initial loan pursuant to contract and the requirements of this Part shall continue to apply to the new loan, except for the term of the loan, the provisions of this section and section 33.2 of this Part, and provided that the monthly.

§ 33.8 Compliance with Federal regulation

Lenders which comply with sections 226.19(b) and 226.20(c) of Regulation Z (12 CFR part 226) or the provisions of 12 CFR 563.9-9 will be deemed to be in compliance with sections 33.2, 33.3(b) and 33.5 of this Part to the extent that sections 33.2, 33.3(b) and 33.5 pertain to variable rate closed-end personal loan transactions subject to section 226.19(b) or 12 CFR 563.9-9(b).

Chapter I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 34. AVAILABILITY OF FUNDS FOR ITEMS DEPOSITED FOR COLLECTION

Statutory authority: Banking Law, § 14-d

Sec.

34.1 Scope
34.2 Relationship to Federal law
34.3 Definitions
34.4 Availability of funds for items deposited
34.5 Exceptions
34.6 Notifications and disclosures

§34.1 Scope

The provisions of this Part apply to any office maintained in this State for acceptance of deposits by State and Federally chartered or licensed banks, trust companies, savings banks, savings and loan associations, credit unions and branches of foreign banking corporations.

§ 34.2 Relationship to Federal law

(a) The availability and disclosure provisions of this Part are inapplicable to transaction accounts except as provided in section 34.4(c) of this Part.

(b) Any bank or savings institution may elect to comply with the availability and disclosure provisions of regulation CC of the Board of Governors of the Federal Reserve System with respect to any type or category of non-transaction account (i.e., account as defined in section 34.3 (a) of this Part). Compliance with the provisions of regulation CC shall be deemed to be in compliance with the availability and disclosure provisions of this Part. (References to regulation CC are to 12 CFR* part 229 entitled "Availability of Funds and Collection of Checks.")

§ 34.3 Definitions

For purposes of the provisions of this Part, the following definitions apply:

(a) Account means a savings account or a time deposit account which has been opened by any person or entity with a bank or savings institution.

(b) Bank means a commercial bank, trust company or branch of a foreign banking corporation.

(c) Business day means any day excluding Saturdays, Sundays and legal holidays. For purposes of calculating the number of business days by which the depositary bank is obliged to make funds available for withdrawal by the customer, the term business day will exclude the day of deposit and the first business day after the day of deposit if the deposit is made on a Saturday, Sunday, legal holiday or after the close of business as determined by the office of the depositary bank. For electronic branches, opening and closing times shall be the hours of the closest manned office of the depositary bank.

(d) Depositary bank, depending on the context, means either the bank or the savings institution which maintains the account into which the item is first deposited.

(e) Item means a check, negotiable order of withdrawal or money order deposited into an account.

(f) Local bank or savings institution means an office of a bank or savings institution which is located in the same city, town or village, and which uses the same clearing facility, as the office of the depositary bank.

(g) Savings institution means a savings bank, a savings and loan association or a credit union.

(h) Transaction account means an account as defined in 12 CFR 229.3(a).

§ 34.4 Availability of funds for items deposited

With respect to items deposited in an account, all depositary banks shall make the funds for such items available for withdrawal from such account, in accordance with the periods of time as set forth in this section (except as otherwise provided under section 34.5 of this Part), the provisions of individual account agreements notwithstanding. Nothing contained in this section shall prevent a depositary bank from making funds available for withdrawal within a shorter period of time than that required by this section, pursuant to a depositary bank's policy. Nothing contained in this section or elsewhere in this Part shall affect a depositary bank's existing right to accept or reject an item for deposit or, if the item is accepted for deposit and the depositary bank has made provisional settlement with its customer, to revoke the settlement given by it, charge back the customer's account or claim a refund therefor in accordance with New York Uniform Commercial Code.

(a) Banks shall make funds available at the start of the business day subsequent to the periods detailed below:

(1) for items drawn on a local bank or savings institution (other than the depositary bank), and except as provided under paragraphs (4), (5), (6) and (7) of this subdivision, two business days;

(2) for items drawn on a nonlocal bank or savings institution (other than the depositary bank) which is located in this State, and except as provided under paragraphs (4), (5), (6) and (7) of this subdivision, three business days;

(3) for items drawn on any other bank or savings institution located in the United States, and except as provided under paragraphs (4), (5), (6) and (7) of this subdivision, six business days;

(4) for any item drawn in a face amount of $ 100 or less, one business day;

(5) for any item drawn on a New York branch of the depositary bank, one business day;

(6) for first-endorsed items drawn on the U. S. Treasury, one business day;

(7) for any first-endorsed items drawn by the State of New York or any counties, cities, towns or villages thereof, one business day, if such items are deposited at a manned teller station together with a separate deposit slip which indicates that the item being deposited is a government check; and

(8) with respect to any item which is deposited at a shared or nonproprietary electronic facility of the depositary institution, it may, at its option, add an additional business day to the relevant availability time stipulated herein.

(b) Savings institutions shall make funds available at the start of the business day subsequent to the periods detailed below:

(1) for items drawn on a local bank or savings institution (other than the depositary bank) and except as provided under paragraphs (4), (5), (6) and (7) of this subdivision, three business days;

(2) for items drawn on a nonlocal bank or savings institution (other than the depositary bank) which is located in this State, and except as provided under paragraphs (4), (5), (6) and (7) of this subdivision, four business days;

(3) for items drawn on any other bank or savings institution located in the United States, and except as provided under paragraphs (4), (5), (6) and (7) of this subdivision, eight business days;

(4) for any item drawn in a face amount of $ 100 or less, one business day;

(5) for any item drawn on a New York branch of the depositary bank, one business day;

(6) for first-endorsed items drawn on the U. S. Treasury, one business day;

(7) for any first-endorsed items drawn on the State of New York or any counties, cities, towns or villages thereof, one business day, if such items are deposited at a manned teller station together with a separate deposit slip which indicates that the item being deposited is a government check; and

(8) with respect to any item which is deposited at a shared or nonproprietary electronic facility of the depositary institution, it may, at its option, add an additional business day to the relevant availability time stipulated herein.

(c) The provisions of paragraphs (a) (2) and (b)(2) of this section shall also be applicable to all transaction accounts at banks and savings institutions respectively.

§ 34.5 Exceptions

The exceptions to the requirements imposed under section 34.3 of this Part are as follows:

(a) For any deposited item drawn in an amount of more than $ 5,000, the availability of funds shall be determined according to the depositary bank's policy or, if the customer elects to have the item so cleared on a collection basis (i.e., noncash item basis). Where more than one item, each drawn in an amount no greater than $ 5,000, totalling an amount in excess of $ 5,000, is deposited in one business day, the availability of funds for the item or items that bring the amount deposited to an amount in excess of $ 5,000, shall be determined according to the depositary bank's policy or, if the customer elects to have the item(s) so cleared, on a collection basis (i.e., noncash item basis).

(b) With respect to items deposited by a new customer at a depositary bank, the availability of funds for any item deposited within 30 calendar days of the opening of an account by such customer shall be subject to the depositary bank's policy.

(c) If any account or combination of accounts of a customer has been overdrawn on three separate and distinct occasions within a six-month period all accounts of that customer will be subject to the depositary bank's policy regarding the availability of funds, for a period of six

months commencing with the last return for insufficient funds. This exception does not include accounts with overdraft privileges established pursuant to contractual agreement unless the customer's credit line has been exceeded.

(d) In an instance where the depositary bank in good faith doubts the collectibility of funds for an item (e.g., suspicion of bankruptcy of the drawer of a check, suspicion of fraud), the depositary bank may make funds available for such item on a collection basis, or according to the depositary bank's policy. The customer of the account must be notified by the depositary bank of this action as soon as possible.

(e) The availability of funds shall be governed by the depositary bank's policy in the case of any items drawn on an office, including an office of the depositary bank, located outside any of the United States and the District of Columbia.

(f) Nothing contained in this Part shall prohibit a depositary bank and a retail customer from agreeing in writing to a greater period of time than that prescribed by this Part for making funds available for withdrawal because of special circumstances, provided that such agreement is not contained in a preprinted form and is not a usual, regular business practice of the depositary bank.

(g) Delay by a depositary bank beyond time limits prescribed or permitted by this Part is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the depositary bank provided it exercises such diligence as the circumstances require.

§ 34.6 Notifications and disclosures

(a) Each depositary bank shall notify its account holders, in writing and in plain language, of the time periods for the availability of funds as required by this Part and of the exceptions thereto, together with a statement of the depositary bank's policy with respect to the exceptions. Such notifications shall include a disclosure of the hour, or hours if the close of business differs at certain offices, at which the depositary bank closes business with respect to items received for deposit, which disclosure shall be set out in a conspicuous manner.

(b) Each depositary bank shall post in a conspicuous place in each manned branch a notice which substantially sets forth the time periods applicable to the availability of funds for items received for deposit.

(c) In light of the imminent adoption of comprehensive Federal regulations governing expedited funds availability which will largely preempt this Part, subdivision (a) of this section notwithstanding, no depositary bank shall be required to provide the notice required by that subdivision to any persons or entities whose accounts are made subject to this part by this amendment; nor shall any depositary bank be required to provide notice pursuant to that subdivision to any other person of the change to subdivision (a) of section 34.4 of this Part adopted by this amendment.

CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 36. INVESTMENTS BY BANKS OR TRUST COMPANIES IN INVESTMENT COMPANIES

Statutory authority: Banking Law, §§ 14(1), 14(1)(d), 97(5)

Sec.
36.1 Authorization
36.2 Requirements

§ 36.1 Authorization

Subject to the requirements of section 36.2 of this Part, a bank or trust company may invest in the shares of investment companies (henceforth referred to as a "fund" or "funds"), provided that the portfolio of the fund consists solely of investments in stocks and obligations in which banks or trust companies are permitted to invest directly. Investment companies include open-end and closed-end investment companies and unit investment trusts as those terms are used in the Investment Company Act of 1940 (title 15 United States Code, section 80a-1 et seq.).

§ 36.2 Requirements

(a) A bank or trust company may invest in the shares of any single fund without express limit, subject to the limitations contained in subdivision (b) of this section.

(b) Banks or trust companies which invest in funds which contain assets subject to investment limits must review the fund portfolios on a periodic basis in order to ascertain whether the combined investment of the bank or trust company in the obligations of a single issuer (taking into account the bank or trust company's proportionate holding of fund shares together with any other investment) would comply with the limitations contained in sections 97(4-b), 103 and 106 of the Banking Law, if said sections were to be applied to such investments, and must reduce excessive holdings within a reasonable period of time to conform to such limitations.

(c) It is also expected that a bank or trust company investing in funds shall periodically monitor the portfolios of such funds to determine the appropriateness of the funds' investments for the portfolio of the bank or trust company.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 37. REAL ESTATE EQUITY INVESTMENTS IN COMMUNITY DEVELOPMENT PROJECTS

Statutory authority: Banking Law §§14(1), 98(1)(d)

Sec.
37.1 Authorization
37.2 Limitation

§ 37.1 Authorization

Subject to the limitations contained in Section 37.2 of this Part, and the prior review by the Department, a bank or trust company may make real estate equity investments in community development projects provided that any such project primarily serves a public purpose. A project will be deemed to serve a public purpose if it promotes housing and economic revitalization or development in low and moderate income areas and directly benefits low and moderate income residents or small businesses. In determining whether the project primarily serves a public purpose, consideration shall also be given as to whether the project primarily benefits the particular bank's local service area, and whether there is significant community involvement, including the extent to which community groups are involved in project implementation, and the extent of community and public support for the project.

§ 37.2 Limitations

A bank or trust company's investment in any one community development project pursuant to this Part may not exceed two percent of its capital stock, surplus and undivided profits and its aggregate investment in all such projects may not exceed ten percent of its capital stock, surplus and undivided profits.

[TITLE 3] BANKING [DEPARTMENT] DIVISION
CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 38

DEFINITIONS OF TERMS; ADVERTISING; APPLICATION AND COMMITMENT DISCLOSURES AND PROCEDURES; IMPROPER CONDUCT UNDER ARTICLE 12-D

Statutory authority: Banking Law, §§ 6-i, 9-o, 14, 590-a, 590(3) and 595-a

Sec.
38.1 Definitions.
38.2 Solicitation and advertising.
38.3 Application disclosures and procedures.
38.4 Commitment disclosures and procedures.
38.5 Prevailing rate.
38.6 Lock-in agreements (guaranteed rate).
38.7 Prohibited conduct.
38.8 Administrative Actions and penalties.
38.9 Limitation on excess insurance and required disclosures.
38.10 Notification requirement.
38.11 Requirements for branches.
38.12 Dual agency transaction disclosures.
38.13 FHA mortgage loan correspondents.

§ 38.1 Definitions

For purposes of this Part:

(a) The term advertisement shall mean material used or intended to be used to induce the public to apply for a mortgage loan. Such term shall include any printed or published material, electronic media, audio or visual material, or descriptive literature concerning a mortgage loan to be solicited, processed, negotiated or funded by a mortgage broker, mortgage banker or exempt organization whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, billboard, electronic media or similar display. The term advertisement shall not include promotional material containing 15 words or fewer relating to the mortgage business of the entity which material does not contain references to a specific rate or product, such as balloons, hats, pencils or pens, calendars or rulers displaying the name of the registrant, licensee or exempt organization. The term advertisement also shall not include any disclosures, program descriptions or other published materials prepared or authorized by any State or Federal government agency, nor shall such term include any material or communication which has been excluded from any definition of advertisement for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures.

(b) The term application shall have the same meaning as that term has in section 202.2(f) of Regulation B of the Federal Reserve System (12 CFR 202). The regulation, including the interpretations thereof contained in Supplement 1 to Part 202-Official Staff Interpretations, is incorporated by reference and is authored by the Board of Governors of the Federal Reserve System and published by the United States Government Printing Office, Washington, DC 20402. A copy is available for public inspection and copying at the New York City office of the New York State Department of Financial Services located at the address stated in Supervisory Policy G 1 of Title 3 of the NYCRR.

(c) The term application fee shall mean any fee taken by a mortgage broker, mortgage banker or exempt organization in connection with an application for a mortgage loan including any charge for soliciting, processing, placing or negotiating a mortgage loan. The term application fee does not include a commitment fee taken pursuant to section 38.4 or a lock-in fee taken pursuant to section 38.6 of this Part, nor does such term include payments to be remitted to third-party service providers, such as appraisal fees or fees for credit reports, nor payments or remittances to the mortgage broker, mortgage banker or exempt organization by the lender. In addition, the term application fee does not include a processing fee so long as the application fee does not include the cost of processing the application.

(d) The terms bonus and premium shall mean money or an equivalent given in addition to usual compensation.

(e) The term branch shall mean any location, separate from the head office, at which loan solicitation and/or loan processing takes place irrespective of whether the only contact with an applicant from that location is by internet, telephone, facsimile or other electronic process. The term shall not include the residences of any director, officer, partner, employee, independent contractor or consultant provided that the primary purpose of such residence is for personal, household or family use.

(f) The term branch manager shall mean the individual who is in charge of the operations of one or more branch locations irrespective of the title given to that individual.

(g) The term commitment shall mean a written or electronically transmitted offer to make a mortgage loan signed by a licensee or exempt organization.

(h) The term commitment agreement shall mean a commitment accepted by an applicant for a mortgage loan. Such acceptance shall be evidenced by either a handwritten or digital signature to the extent that such signatures are recognized as binding under New York State law.

(i) The term commitment fee shall mean a fee, exclusive of third-party charges, imposed by the licensee or exempt organization as consideration for binding the licensee or exempt organization to make a mortgage loan or as a lender's requirement for acceptance by the consumer of a commitment.

(j) The term digital signature shall mean any electronic authentication method that provides the same assurance as a signature in a paper-based system.

(k) The term electronically transmitted or electronic media shall mean any transmission via diskette, wire or tape including but not limited to the Intranet (interactive or otherwise), the Internet, any other computer network, electronic mail, or any other similar method of transmission.

(l) The term employee shall mean:

(1) any individual performing a service for any one of either a mortgage broker, mortgage banker or exempt organization for whom such entity would be liable for withholding taxes pursuant to Title 26 of the United States Code; or

(2) any individual engaged in regulated activities as an independent contractor pursuant to Title 26 of the United States Code of any one of either a mortgage broker, mortgage banker or exempt organization.

(m) The term exempt organization shall mean any person or entity engaged in the business of making mortgage loans which entity is exempt from licensing under Article 12-D of the Banking Law and Part 39 of this Title.

(n) The term lender shall mean a mortgage banker or an exempt organization pursuant to Article 12-D of the New York Banking Law.

(o) The term lock-in agreement shall mean a written or electronically transmitted agreement between a mortgage banker or exempt organization and an applicant for a mortgage loan which, subject to the terms set forth therein, obligates the mortgage banker or exempt organization to make a mortgage loan at a specified rate and a specific number of points, if any.

(p) The term lock-in fee shall mean points or other fees, or discounts taken by a mortgage broker for transmittal to a mortgage banker or exempt organization or taken directly by a mortgage banker or exempt organization as consideration for the making of a lock-in agreement.

(q) The term make a loan or making a loan, shall mean for compensation or gain, either directly or indirectly, advancing funds, offering to advance funds, or making a commitment to advance funds to a mortgagor as a mortgage loan. As used in this Part, the term mortgagor shall refer only to a retail consumer/borrower.

(r) The term mortgage banker or licensee shall mean any person or entity licensed pursuant to Article 12-D of the Banking Law and Regulation Part 410 of this Title to make mortgage loans.

(s) The term mortgage broker or registrant shall mean any person or entity registered pursuant to Article 12-D of the Banking Law and Regulation Part 410 of this Title.

(t) The term mortgage loan shall mean a loan made to one or more individuals primarily for personal, family or household use primarily secured by a first or junior mortgage on residential real property located in this State or by certificates of stock or other evidence of ownership interests in, and proprietary leases from, corporations or partnerships formed for the purpose of cooperative ownership of real estate in this State. Such term shall not include residential loan products exempt pursuant to Section 39.5 of this Title.

(u) The term net branch shall mean any location for which the branch manager does either or both of the following: (1) incur or assume liability to a third party other than in the licensee or registrant's name except for credit reports, appraisals and/or de minimis office supplies or makes payment on behalf of the licensee or registrant to the third party; or (2) incur or assume liability to a third party other than in the licensee or registrant's name by executing the lease for the branch premises or makes payment on behalf of the licensee or registrant to the third party. In addition, the term "net branch" shall mean any location for which the branch manager assumes a combination but not necessarily all, of the following indicia of ownership: (1) sharing in profits and/or losses of such location; (2) controlling a corporate checkbook; or (3) exercising control of personnel through the power to hire or fire individuals.

(v) The term point shall mean any fee or discount calculated as one percent of the principal amount of the loan or one percent of the amount financed, irrespective of how such point may be denominated by the mortgage broker, mortgage banker or exempt organization. The term point shall include, but not be limited to, percentage-based fees denominated as brokerage fees (excluding fees taken for real estate brokerage services), origination fees, or warehousing fees.

(w) The term premium pricing shall mean any pricing arrangement under which a loan application is submitted to a lender at an interest rate (including points) that will:

(1) meet the lender's minimum yield requirements; and

(2) enable the mortgage broker, mortgage banker or exempt organization when acting in a mortgage brokerage capacity to receive as all or part of the difference between the interest rate (including points) received by the lender and the minimum interest rate (including points) at which the lender would have been willing to make the loan to the consumer/borrower.

(x) The term prevailing rate shall mean a mortgage loan rate that is set by the mortgage banker or exempt organization after the time a commitment is issued but prior to or on the closing date. Such rate may be fixed or variable.

(y) The term residential real property shall mean real property located in this State improved by a one-to-four-family owner-occupied dwelling used or occupied, or intended to be used or

occupied, wholly or partly, as the home or residence of one or more owners, but shall not refer to unimproved real property upon which such dwelling is to be constructed.

(z) The term settlement cost shall mean the total cost to the consumer for each service required to be listed as a settlement service in the "Good Faith Estimate of Settlement Services" required in certain mortgage loan transactions by Regulation X of the Department of Housing and Urban Development (24 CFR part 3500). The term settlement cost shall have the meaning described herein irrespective of whether the mortgage loan is subject to Regulation X.

(aa) The terms soliciting, processing, placing and negotiating a mortgage loan shall mean performing or offering to perform such activities for compensation or gain, either directly or indirectly, with a lender on behalf of a third party.

§ 38.2 Solicitation and advertising

(a) No mortgage broker shall advertise its business in New York in print or electronic media without including the legend "Registered Mortgage Broker-NYS Department of Financial Services " or words to like effect therein. No mortgage banker shall advertise its business in New York without including the legend "Licensed Mortgage Banker-NYS Department of Financial Services" or words to like effect therein. Business cards, letterhead and general electronic media communications, to the extent that they are not used for general advertising purposes, need not include the legend.

(b) Any advertisement by a mortgage broker, mortgage banker or exempt organization in print or electronic media must indicate the name of the entity and a street address of any one of its offices in New York State or, if the entity is not located in New York State, the street address of any one office outside New York. This requirement will not apply to advertisements made by a mortgage broker, mortgage banker or exempt organization having more than ten (10) offices in New York State.

(c) No mortgage loan products may be advertised by a mortgage broker, mortgage banker or exempt organization unless the entity has the advertised product available to a reasonable number of qualified applicants responding to the advertisement on the date the advertisement appears, or the entity's next business day. Nothing in this section shall require a lender to make a loan to an unqualified applicant. This requirement shall not be deemed to be violated if the aggregate principal amount of the advertised product available to all applicants is limited to the amount specified in an agreement between the entity and a third person (e.g., state mortgage agency) to sell such product to the third person, and the entity discloses in the advertisement for such product that the availability of such product is limited.

(d) No advertisement by a mortgage broker shall contain language which indicates or suggests that the mortgage broker will fund a mortgage loan. Any advertisement by a mortgage broker must contain a statement to the effect that the mortgage broker arranges mortgage loans with thirdparty providers.

(e) No mortgage broker, mortgage banker or exempt organization shall fraudulently or deceitfully advertise a mortgage loan, or misrepresent the terms, conditions or charges incident thereto. Without limiting the foregoing, the following conduct shall be deemed fraudulent, deceitful or misleading:

(1) The advertisement of "immediate approval" of a loan application or "immediate closing" of a loan;

(2) The advertisement of a "no-point" mortgage loan when points, as defined herein, are accepted as a condition for commitment or closing, or the advertisement of an intentionally incorrect specific number of points;

(3) The advertisement that an applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit may exist, such as the percentage down payment required, that a higher rate or points may be required, or that restrictions as to the maximum principal amount of the loan offered may apply;

(4) The advertisement of a specific time period within which a commitment will be issued unless a commitment will be issued to a qualified applicant within the time period specified, if at all;

(5) The advertisement of a mortgage loan where a prevailing rate is indicated in the advertisement, unless the advertisement specifically states that the expressed rate may change or not be available at commitment or closing.

(f) Every mortgage broker, mortgage banker and exempt organization shall maintain a record of samples of its advertisements (including commercial scripts of all radio broadcasts, television broadcasts and electronic media) for examination by the Superintendent for a period of two years from the date of publication.

(g) Any advertisement by a mortgage broker, mortgage banker or exempt organization for a mortgage loan product containing a prepayment penalty which advertisement sets forth the interest rate and/or points of such product shall include a statement indicating that the product has a pre-payment penalty.

§ 38.3 Application disclosures and procedures

Article 12-D requires and authorizes the [Banking Board] Superintendent to promulgate regulations governing the disclosures which must be given and the procedures which must be followed at the time an application is taken. No mortgage broker, mortgage banker or exempt organization may take an application, application fee, credit report fee or property appraisal fee prior to making the disclosures set forth in this section. Each entity shall also comply with the procedures set forth in this section regarding the processing of applications. An application may

be taken in writing, over the telephone or electronically transmitted. A written application, irrespective of how it is transmitted, should contain the following statement: "It is a crime to intentionally falsify information on this application." For oral applications, the mortgage broker, mortgage banker or exempt organization must make this statement to the borrower(s).

(a) Mortgage broker application disclosures and procedures.

(1) Disclosures. Prior to taking an application or collecting an application fee, credit report fee or property appraisal fee, every mortgage broker shall disclose to the applicant in writing or via electronic media:

(i) that such mortgage broker may not make mortgage loans or commitments;

(ii) that such mortgage broker cannot guarantee acceptance into any particular loan program, nor can that mortgage broker promise any specific loan terms or conditions;

(iii) whether the mortgage broker places loans primarily with any three or fewer lenders, and if so, the name(s) of such lender(s);

(iv) a statement to the effect that the rate, points, fees, and other terms quoted at commitment by or on behalf of the lender encompass the consideration to be received by the mortgage broker from a lender for its services. In addition, the statement shall disclose the specific maximum amount of such consideration to be received;

(v) the amount of the application fee, and the registrant's good faith estimate of the credit report fee, property appraisal fee, processing fee, if any, and the terms and conditions for obtaining a refund of such fees if any;

(vi) the specific services which will be provided or performed for the application fee and/or the processing fee;

(vii) (a) the maximum consideration, including premium pricing, fees and points, payable by the lender to the mortgage broker; (b) the maximum of any fees or points to be paid by the applicant directly to the mortgage broker; and (c) the combined total consideration set forth in (a) and (b) above.

(viii) if applicable, any premiums or bonuses to be paid to the mortgage broker by the lender and/or the basis of its eligibility to receive premiums or bonuses;

(ix) if applicable, a description of the consumer protections and lender disclosures which are lost when the loan is placed with a private investor that is neither an exempt organization nor licensed pursuant to Article 12-D of the Banking Law. This disclosure shall include a notice that the requirement that the term of a balloon mortgage be at least three (3) years does not necessarily apply to a loan placed with a private investor. This disclosure shall be no less

conspicuous than any other disclosures made pursuant to this section;

(x) if applicable, the fact that fees are being divided between more than one mortgage broker and/or mortgage banker and/or exempt organization acting as a mortgage broker and the dollar amount or the percentage, or if not known, a good faith estimate thereof, of the fee to be received by each mortgage broker, mortgage banker or exempt organization;

(xi) the fact that certain mortgage loan products impose a pre-payment penalty on the borrower and the amount of, or the formula for calculating, the prepayment penalty, if any, and the terms of the prepayment penalty, if any, will be disclosed to the borrower as soon as they are known, but no later than the issuance of the commitment (if any), for the loan product chosen by the borrower;

(xii) with regard to written applications, a toll free telephone number of a person in a management position with the mortgage broker who may be contacted about problems with the application or if there is no toll free telephone number, then the circumstances under which a collect call will be accepted. With respect to electronic applications, the disclosure shall include the electronic mail address of the mortgage broker.

(2) Required procedures for mortgage brokers.

(i) The application fee and/or processing fee. If any, shall be denominated as such and shall be reasonably related to the services to be performed on behalf of the applicant. Neither fee may be based upon a percentage of the principal amount of the loan or the amount financed. The separation of application and processing fees is intended to benefit consumers by allowing them to obtain a more complete and accurate itemization of fees charged in the transaction and to thereby more effectively comparison shop when seeking to obtain a residential mortgage.

(ii) Every written application taken by a mortgage broker shall be signed by the employee taking such application, and shall include the name and/or title of such employee.

(iii) Every electronic application form used by a mortgage broker shall include the e-mail address of the mortgage broker.

(iv) No mortgage broker shall take any fee in connection with a mortgage loan other than an application fee, credit report fee and property appraisal fee prior to the acceptance by an applicant of a commitment from a lender nor shall any mortgage broker take any fee, prior to closing, other than an application fee, credit report fee and property appraisal fee when the commitment from the lender is subject to any of the following:

a. adequate appraisal value;
b. satisfactory credit history and obligations; c. pre-sale requirement clause in a condominium or co-op mortgage commitment.

Nothing in this section shall prohibit a mortgage broker from taking a lock-in fee for transmittal to a mortgage banker or exempt organization subject to the restrictions imposed by Part 38.6(c).

(v) Any amount collected in excess of the actual cost of the credit report fee and property appraisal fee must be returned at or prior to closing.

(vi) Some or all of the disclosures required by this section may appear on forms used to comply with otherwise applicable state or federal laws or, at the option of the entity making the disclosure, as separate disclosures.

(vii) All disclosures concerning refundability must be no less conspicuous than any other disclosure made pursuant to this section.

(viii) It shall be the duty of every registrant to familiarize itself and its employees with the qualifications necessary to fulfill lenders' requirements for the loan products and programs available through that mortgage broker.

(ix) For written applications, each mortgage broker shall provide each applicant with a duplicate of the signed application within seven (7) business days from the time of receipt of such application by the mortgage broker. Both the applicant's signature and the signature of the employee may be hand-written or digital to the extent such signatures are recognized as binding under New York State law. For electronic applications, each mortgage broker shall provide each applicant with a duplicate copy of the application within seven (7) business days from the time of receipt of such application by the mortgage broker unless the applicant indicates that he or she has the computer capacity to down-load and print such application. The applicant's signature may be handwritten or digital to the extent such signatures are recognized as binding under New York State law.

(x) Each mortgage broker shall submit a copy to the lender of any separate written or electronic fee agreement made with the applicant or a written or electronic statement that there is no separate fee agreement. If applicable, the disclosures in Part 38.3(a)(1)(x) shall be included in the fee agreement.

(xi) With regard to written pre-application disclosures, each mortgage broker shall maintain a duplicate copy of the pre-application disclosures signed by the applicant.

(xii) With regard to electronic pre-application disclosures, no mortgage broker shall take an application unless the applicant either digitally signs, to the extent such signatures are recognized as binding under New York State law, the pre-application disclosures he or she has received electronically or acknowledges electronic receipt of the pre-application disclosures through the use of a "required confirm button" without which the transaction may not proceed further. In addition, within three business days of the electronic transmission of the pre-

application disclosures, a hard-copy of such pre-application disclosures shall be mailed to each applicant who indicates that he or she does not have the computer capacity to down-load and print such disclosures. The mortgage broker shall either keep a copy of the pre-application disclosures digitally signed by the applicant or be able to demonstrate that the transaction could not proceed further than the display of the pre-application disclosures without the applicant's use of the "required confirm button". Furthermore, in those instances in which a hard copy of the pre-application disclosures is not mailed to the applicant, the mortgage broker must be able to demonstrate that information was obtained as to the applicant's computer capacity to down-load and print such disclosures.

(xiii) All mail application packages must include the pre-application disclosures and a stamped self-addressed envelope with a request that a signed copy of these disclosures be returned to the mortgage broker. The mortgage broker shall keep a copy of this request.

(xiv) If a mortgage loan involves more than one mortgage broker, mortgage banker or exempt organization, or any combination thereof, the persons or entities involved shall agree among themselves as to who must comply with the disclosure and other requirements imposed under this Part 38.3. In the absence of a written or electronic co-broker agreement, all such persons or entities shall be liable therefor.

(xv) If there is no toll-free telephone number, then collect calls must be accepted from those applicants who live more than fifty miles from a processing center.

(b) Mortgage banker and exempt organization application disclosures and procedures.

(1) Disclosures. In those instances in which the proceeds of the mortgage loan will be used to finance the acquisition of the dwelling and in all other residential mortgage loan transactions in which a commitment fee or points are paid or will be paid to the lender prior to closing, then prior to the taking of an application, application fee, credit report fee or property appraisal fee, every mortgage banker or exempt organization shall disclose in writing or via electronic media to each applicant for a mortgage loan:

(i) the amount of the application fee, and the mortgage banker or exempt organization's good faith estimate of the credit report fee, property appraisal fee, the processing fee, if any, and the terms and conditions, if any, under which such fees may be refundable. In addition, no fee other than an application fee, credit report fee, property appraisal fee and lock-in fee shall be taken prior to the acceptance by an applicant of a commitment;

(ii) in those instances in which the lender routinely assigns the commitments it has issued in its own name to a third party or parties, the amount of any fee the lender will pay to and/or receive from, the name and address of and the service(s) to be performed by such third party or parties;

(iii) the fact that certain mortgage loan products impose a pre-payment penalty on the

borrower and the amount of, or formula for calculating, the prepayment penalty, if any, and the terms of the prepayment penalty, if any, will be disclosed to the borrower as soon as they are known, but no later than the issuance of the commitment (if any), for the loan product chosen by the borrower;

(iv) with regard to written applications, a toll free telephone number of a person in a management position with the mortgage banker or exempt organization who may be contacted about problems with the application or if there is no toll free telephone number, then the circumstances under which a collect call will be accepted. With respect to electronic applications, the disclosure shall include the electronic mail address of the mortgage banker or exempt organization.

(v) in those instances in which the lender charges discount points, the following statement: Discount points should lower the interest rate paid on the loan but may not lower the overall cost of the loan. If you refinance or pay off your loan quickly, you will lose the benefit of any lower interest rate provided by the discount points. Furthermore, if you finance the discount points, this will increase the amount of money that you must repay to the lender and you will have to pay interest on the discount points as part of the amount you have borrowed.

(2) Required procedures for mortgage bankers and exempt organizations.

(i) The application fee and/or processing fee, if any, shall be denominated as such and shall be reasonably related to the services to be performed on behalf of the applicant. Neither fee may be based upon a percentage of the principal amount of the loan or the amount financed. The separation of application and processing fees is intended to benefit consumers by allowing them to obtain a more complete and accurate itemization of fees charged in the transaction and to thereby more effectively comparison shop when seeking to obtain a residential mortgage.

(ii) Any amount collected in excess of the actual cost of the credit report fee and the property appraisal fee must be returned at or prior to closing.

(iii) A mortgage banker or exempt organization may satisfy the disclosure requirements of this section by making such disclosures in one or more documents, including but not limited to any form or document used to comply with otherwise applicable state or federal laws or regulations.

(iv) Every written application taken by a mortgage banker or exempt organization shall be signed by the employee taking such application, and shall include the name and/or title of such employee.

(v) Every electronic application form used by a mortgage banker or exempt organization shall include the e-mail address of the mortgage banker or exempt organization.

(vi) For written applications, each mortgage banker or exempt organization shall provide each applicant with a duplicate of the signed application within seven (7) business days from the time of receipt of such application by the mortgage or exempt organization. Both the applicant's signature and the signature of the employee may be hand-written or digital to the extent such signatures are recognized as binding under New York State law. For electronic applications, each mortgage banker or exempt organization shall provide each applicant with a duplicate copy of the application within seven (7) business days from the time of receipt of such application by the mortgage banker or exempt organization unless the applicant indicates that he or she has the computer capacity to down-load and print such application. The applicant's signature may be hand-written or digital to the extent such signatures are recognized as binding under New York State law.

(vii) All disclosures concerning refundability must be no less conspicuous than any other disclosure made pursuant to this section.

(viii) With regard to written pre-application disclosures, every applicant shall sign a duplicate copy of the pre-application disclosures he or she has received which shall be kept by the mortgage banker or exempt organization.

(ix) With regard to electronic pre-application disclosures, no mortgage banker or exempt organization shall take an application unless the applicant either digitally signs, to the extent such signatures are recognized as binding under New York State law, the pre-application disclosures he or she has received electronically or acknowledges electronic receipt of the pre-application disclosures through the use of a "required confirm button" without which the transaction may not proceed further. In addition, within three business days, a hard-copy of such pre-application disclosures shall be mailed to each applicant who indicates that he or she does not have the computer capacity to down-load and print such disclosures. The mortgage banker or exempt organization shall either keep a copy of the pre-application disclosures digitally signed by the applicant or be able to demonstrate that the transaction could not proceed further than the display of the pre-application disclosures without the applicant's use of the "required confirm button". Furthermore, in those instances in which a hard copy of the pre-application disclosures is not mailed to the applicant, then the mortgage banker or exempt organization must be able to demonstrate that information was obtained as to the applicant's computer capacity to down-load and print such disclosures.

(x) All mail application packages must include the pre-application disclosures and a stamped self-addressed envelope with a request that a signed copy of these disclosures be returned to the mortgage banker or exempt organization. The mortgage banker or exempt organization shall keep a copy of this request.

(xi) If a mortgage loan involves more than one mortgage broker, mortgage banker or exempt organization, or any combination thereof, the persons or entities involved shall agree among themselves as to who must comply with the disclosure and other requirements imposed under

this Part 38.3. In the absence of a written or electronic co-broker agreement, all such persons or entities shall be liable therefor.

(xii) If there is no toll-free telephone number, then collect calls must be accepted from those applicants who live more than fifty miles from a processing center.

(c) Mortgage banker or exempt organization acting in a mortgage brokerage capacity.

(1) Disclosures. Prior to taking an application or collecting an application fee, credit report fee or appraisal fee, every mortgage banker or exempt organization acting as a mortgage broker shall disclose to the applicant in writing or via electronic media:

(i) that such mortgage banker or exempt organization will not be making the mortgage loan;

(ii) that such mortgage banker or exempt organization can neither guarantee acceptance into any particular loan program nor promise any specific loan terms or conditions;

(iii) whether the mortgage banker or exempt organization places loans primarily with any three or fewer lenders, and if so, the name(s) of such lender(s);

(iv) a statement to the effect that the rate, points, fees, and other terms quoted at commitment by or on behalf of the lender encompass the consideration to be received by the mortgage banker or exempt organization from a lender for its services. In addition, this statement shall disclose the specific maximum amount of such consideration to be received;

(v) the amount of the application fee, and the good faith estimate of the credit report, property appraisal fee, processing fee, if any, and the terms and conditions, if any, under which such fees may be refundable. In addition, no fee other than an application fee, credit report fee and property appraisal fee shall be taken prior to the acceptance by an applicant of a commitment;

(vi) the specific services which will be provided or performed for the application fee and/or the processing fee;

(vii) if applicable, a description of the consumer protections and lender disclosures which are lost when the loan is placed with a private investor that is neither an exempt organization nor licensed pursuant to Article 12-D of the Banking Law. A statement must be included to the effect that if a loan is placed with a private lender, certain consumer protections and lender disclosures required by New York law and regulations do not apply to the loan. The statement shall include a notice that the requirement that the term of a balloon mortgage be at least three (3) years does not necessarily apply to a loan placed with a private investor. This statement shall be no less conspicuous than any other disclosures made pursuant to this section;

(viii) if applicable, the fact that fees are being divided between more than one mortgage broker

and/or mortgage banker and/or exempt organization and the dollar amount or the percentage, or if not known, a good faith estimate thereof, of the fee to be received by each mortgage broker, mortgage banker and/or exempt organization;

(ix) no mortgage banker or exempt organization shall take any fee in connection with a mortgage loan other than an application fee, credit report fee and property appraisal fee prior to the acceptance by an applicant of a commitment from a lender nor shall any mortgage banker or exempt organization take any fee, prior to closing, other than an application fee, credit report fee and property appraisal fee when the commitment from the lender is subject to any of the following:

a. adequate appraisal value;

b. satisfactory credit history and obligations; c. pre-sale requirement clause in a condominium or co-op mortgage commitment;

(x) the fact that certain mortgage loan products impose a pre-payment penalty on the borrower and the amount of, or formula for calculating, the prepayment penalty, if any, and the terms of the prepayment penalty, if any, will be disclosed to the borrower as soon as they are known, but no later than the issuance of the commitment (if any), for the loan product chosen by the borrower;

(xi) with regard to written applications, a toll free telephone number of a person in a management position with the mortgage banker or exempt organization who may be contacted about problems with the application. If there is no toll free telephone number, then collect calls must be accepted from those applicants who live more than fifty miles from a processing center. The circumstances under which a collect call will be accepted must be disclosed to the applicant. With respect to electronic applications, the disclosure shall include the electronic mail address of the mortgage banker or exempt organization.

(2) Required procedures for mortgage bankers and exempt organizations acting in a mortgage brokerage capacity. Mortgage bankers or exempt organizations which act in a mortgage brokerage capacity shall comply with the procedures set forth in section 38.3(a)(2). Nothing in this section shall prohibit a mortgage banker or exempt organization from taking a lock-in fee for transmittal to a mortgage banker or exempt organization subject to the restrictions imposed by Part 38.6(c).

(d) Separate application disclosure and procedures. In addition to the disclosures required by this section, each mortgage banker and exempt organization shall disclose in writing or via electronic media to each applicant for a mortgage loan when the interest rate for the loan will be set. If it is the policy of the mortgage banker or exempt organization to allow the applicant to choose when the rate will be set, then the disclosure shall contain a statement to this effect. The disclosure required by this subdivision must be no less conspicuous than the other disclosures made pursuant to this section.

(e) Telephone applications. Nothing in this section shall be construed to prohibit the taking of telephone applications. However, within 10 days of the taking of such application or filling out a borrower's worksheet, and in any event prior to the taking of any fee, the applicant must be given two copies of the application or the worksheet and of the appropriate disclosures for review by the applicant. The applicant must also be provided with a stamped self-addressed return envelope and a written request that the applicant sign and return one copy of the application and the disclosures to the mortgage broker, mortgage banker or exempt organization. In those instances in which a worksheet and pre-application disclosures are provided to the applicant, the applicant need only sign and return the disclosures.

§ 38.4 Commitment disclosures and procedures

(a) Disclosure requirements for mortgage loans for acquisition of a dwelling and for all other mortgage loans for which a commitment fee or points are paid to the lender.

At time of commitment, and in any case prior to the acceptance of a commitment fee or any points, each mortgage banker and exempt organization making a mortgage loan shall disclose in writing or by electronic transmission to each applicant for a mortgage loan the fees to be paid in connection with the commitment and the terms and conditions under which such fees may be refundable. Each mortgage banker and exempt organization shall also disclose the items listed below in the written or electronically transmitted commitment:

(1) Terms and conditions of the mortgage loan.

(i) identification of entity making commitment;

(ii) identification of borrower(s);

(iii) identification of property securing loan;

(iv) principal amount of the loan;

(v) term of the loan;

(vi) initial interest rate;

(vii) initial monthly payment of principal and interest;

(viii) a statement that a balloon payment will be required (if applicable);

(ix) if the loan is an adjustable rate loan, in addition to the foregoing, the lender shall disclose the frequency of change, the index, the margin, and any relevant caps;

(x) a statement that private mortgage insurance will be required (if applicable) and the conditions under which such insurance would no longer be required;

(xi) a statement that flood insurance may be required if the property is in a flood zone;

(xii) a statement that negative amortization may apply (if applicable);

(xiii) whether and under what conditions the mortgage is assumable;

(xiv) a statement that funds are to be escrowed (if applicable);

(xv) total points to be accepted directly or indirectly by or on behalf of the mortgage banker or exempt organization at or prior to closing;

(xvi) the mortgage banker or exempt organization shall separately identify the points, including premium pricing, payable by the lender to a mortgage broker or a mortgage banker or exempt organization when acting in a mortgage brokerage capacity and briefly explain the basis for the premium pricing payment. Upon receipt of a copy of the separate fee agreement between the broker and the applicant, which fee agreement may be in writing or electronically transmitted, the lender is required to disclose any fees or points to be paid by the applicant directly to the mortgage broker;

(xvii) if applicable, the mortgage banker or exempt organization shall separately identify any premiums or bonuses to be paid to the mortgage broker by the lender and the basis of the mortgage broker's eligibility to receive premiums or bonuses; and

(xviii) if applicable, the amount of, or formula for calculating, the prepayment penalty and terms of the prepayment penalty.

(2) Terms and conditions of the commitment.

(i) time during which the commitment is irrevocable and may be accepted by the borrower, which time shall not be less than seven (7) calendar days from the date of commitment or date of mailing, whichever is later;

(ii) amount of fees and charges payable at time of commitment including points or other discounts, origination fees or add-ons; however denominated by the mortgage banker or exempt organization; and

(iii) expiration date of the commitment, which must be a reasonable time for a consumer to arrange for a closing date.

(3) Mandatory disclaimer.

The following disclosure, which shall be no less conspicuous than any other disclosure made pursuant to this section, shall be included:

"IF YOU SIGN THIS COMMITMENT, AND YOU DO NOT CLOSE THIS LOAN IN ACCORDANCE WITH THE DESCRIBED TERMS, YOU MAY LOSE SOME OR ALL OF THE FEES OR CHARGES YOU HAVE PAID."

(4) Conditions precedent to closing.

Either as part of the commitment or on a separate form given in conjunction with the commitment.

(i) a list of those items relating to the real property which must be produced prior to closing, including but not limited to the following items (if applicable):

(a) title report and insurance;

(b) property survey;

(c) copy of certificate of occupancy for use;

(d) satisfactory final inspection (if new construction);

(e) evidence of appropriate hazard insurance;

(f) evidence of flood insurance as appropriate;

(g) master policy insurance certificate (if applicable in the case of condominiums);

(h) termite inspection report;

(i) radon test report;

(j) well water test report; and

(k) septic inspection report.

(ii) a list of those items relating to the cooperative housing unit which must be produced prior to closing, including but not limited to the following items (if applicable):

(a) proprietary lease;

(b) recognition agreement;

(c) pledge of shares of stock;

(d) warranty and representation that no outstanding claims against the proprietary lease or stock will exist at closing; and

(e) copy of certificate of occupancy and title policy for the entire building if conversion has occurred within the last six (6) months.

(iii) a list of foreseeable conditions and documents that will be required for closing of a mortgage loan. This list shall include, but need not be limited to, those property related items listed in section 38.4(a)(4), as applicable, and any other specific property related documents and conditions and underwriting documents and conditions which the lender knows or reasonably should know, based upon the information contained in the applicant's file maintained by the lender at the time the commitment is issued, will be required. Underwriting documents refers only to those documents which the borrower must submit to the lender. The lender does not have to include specific title exceptions in the list. Documents that only require a borrower's signature need not be included in the list of foreseeable documents and conditions.

(b) Disclosure requirements for all residential mortgage loan transactions in which the proceeds of the mortgage loan will not be used to finance the acquisition of the dwelling and no commitment fee or points are paid to the lender prior to closing.

A mortgage banker or exempt organization making a mortgage loan shall not be required to make such loan in accordance with section 38.3 and this section with the exception of the disclosure requirements contained in sections 38.3(b)(2)(vi) and 38.3(d) at application and 38.4(a)(1)(xvi), 38.4(a)(1)(xvii) and 38.4(a)(1)(xviii) upon loan approval provided the mortgage banker or exempt organization does not accept any fees prior to closing other than an application fee, property appraisal fee and credit report fee.

(c) Procedures for mortgage loans for the acquisition of a dwelling and for all other mortgage loans for which a commitment fee or points are paid to the lender.

(1) Every mortgage banker and exempt organization shall provide each applicant with a written or electronically transmitted commitment which incorporates the items listed in sections 38.4(a)(1), (2) (3) and (4). All commitments must be signed by the mortgage banker or exempt organization. All commitment agreements must be signed by the mortgage banker or exempt organization and the applicant. Such signatures may be handwritten or digital to the extent such digital signatures are recognized as binding under New York State law.

(2) With regard to written commitments, every mortgage banker and exempt organization shall provide each applicant with a duplicate hardcopy original of the signed commitment agreement.

(3) With regard to electronic commitments, within three business days of receipt of a commitment agreement, a hard-copy of such commitment agreement shall be mailed to each applicant who indicates that he or she does not have the computer capacity to down-load and print such commitment agreement. The mortgage banker or exempt organization shall keep a copy of the digitally signed commitment agreement. Furthermore, in those instances in which a hard copy of the commitment agreement is not mailed to the applicant, the mortgage banker or exempt organization must be able to demonstrate that information was obtained as to the applicant's computer capacity to down-load and print such commitment agreement.

(4) No commitment given by a mortgage banker or exempt organization may contain any clause which conditions the commitment on the mortgage banker or exempt organization obtaining necessary funding or financing. This requirement shall not be deemed to be violated if the commitment discloses that the commitment is only for a particular loan product with a particular denominated third-party purchaser or investor, and discloses that the commitment is subject to the review and prior approval of that third-party purchaser or investor. No mortgage banker or exempt organization shall make a commitment for such a loan product unless the third-party purchaser or investor has committed to purchase such mortgage loan products from the mortgage banker or exempt organization. If such approval is not obtained the mortgage banker or exempt organization shall refund any points or commitment fees previously collected from the consumer.

(5) No points, however denominated by the mortgage banker or exempt organization, may be required by the mortgage banker or exempt organization as a condition for closing a mortgage loan if they have not previously been disclosed pursuant to this Part.

(6) Any additional settlement costs, documents or other items required to close the loan which are found to be necessary after the commitment has been issued must be disclosed in writing or electronically transmitted to the applicant in a reasonable and timely manner.

(7) All commitment fees accepted pursuant to this Part must be refundable in full if the property appraisal report is not favorable for the product for which the commitment was issued.

(8) A commitment fee and any points taken by a mortgage banker or exempt organization prior to closing must be refunded in full if an applicant who has provided complete and correct credit information as required by the application form is rejected as not creditworthy.

(d) Notice of expiration.

The notice of expiration of the commitment period required by section 595-a (3) (c) of the Banking Law must be a separate document and must be mailed or electronically transmitted to each individual applicant and, in any joint application, either to a notice recipient, if one has been designated as such by the applicants or, if none, then to all the applicants not less than twelve (12) business days nor more than twenty (20) business days prior to the expiration of

the commitment period. This notice need not be given if the expiration of the commitment period is less than twelve (12) days from the date the commitment is accepted, provided that the lender complies with the requirements of sections 38.4(a)(2)(i) and 38.4(a)(2)(iii). This notice may refer to both the expiration of the commitment period and the lock-in period provided that the notice is timely with regard to the expiration of each.

§ 38.5 Prevailing rate

(a) Disclosures. A licensee or exempt organization may issue a "prevailing rate" commitment only in compliance with this section. Prior to acceptance of a commitment fee, points or other discounts, the licensee or exempt organization must issue a commitment which discloses the following:

(1) All disclosures required by section 38.4(a) of this Part excluding information concerning the initial interest rate and the initial monthly payment of principal and interest.

(2) (i) Index and margin. The index and margin, if any, upon which the rate for that mortgage loan will be based. The index must be independently verifiable by the borrower and identification of a source for such verification shall be provided. The commitment must also disclose any points or other discounts; or

(ii) Base Rate and Deviation. A base rate and the maximum interest rate at which the loan may close. The interest rate at closing may never exceed one percentage point above the base rate. The interest rate may be adjusted downward at any time. For example, if the commitment sets a base rate of 9.5%, the rate may float no higher than 10.5%. A mortgage banker or exempt organization which offers prevailing rate commitments in accordance with this paragraph shall make available for inspection a list which identifies specific products and the rate at which such products are available on any day ("rate sheet"). Such rate sheet shall be maintained for two years.

(b) Procedures.

(1) In connection with a prevailing rate commitment for which a commitment fee is accepted prior to closing, a lender may offer a lower initial or introductory rate to a borrower as long as the index and any margin or the description for the adjusted rate is provided in accordance with this section.

(2) A licensee or exempt organization may issue a commitment which specifies that a rate will be determined at or prior to the closing date without disclosing the index and margin or base rate and deviation as provided above only if no commitment fee, origination fee, points or other discounts are accepted prior to the fixing of the rate. A prevailing rate offered pursuant to this section must be reasonably related to market conditions at the time of the fixing of the rate.

(3) Nothing contained herein shall relieve the licensee or exempt organization from disclosing in the commitment any other item required by section 38.4(a) of this Part, including fees, points or other discounts or settlement costs.

§ 38.6 Lock-in agreements (guaranteed rate)

A mortgage banker or exempt organization may take points or a lock-in fee prior to the issuance of a commitment only in compliance with this section.

(a) Required disclosures and notices.

Prior to taking of any points or a lock-in fee, a mortgage banker or exempt organization must provide the applicant with a lock-in agreement signed and dated by the entity and the applicant which incorporates the following information:

(1) Each of the following:

(i) identification of property, principal amount and term of loan, initial interest rate and points, commitment fees and lock-in fees;

(ii) the lock-in agreement shall become binding on both the applicant and the mortgage banker or exempt organization when signed by both;

(iii) the time by which the lock-in fee must be paid to the mortgage banker or exempt organization, provided that such fee may not be taken prior to the time that the lock-in agreement becomes binding on both the applicant and the mortgage banker or exempt organization;

(iv) whether fixed or variable, and if a variable rate, the index and margin, or the method, by which an interest rate change for the mortgage loan will be calculated;

(v) balloon payment (if applicable);

(vi) initial monthly payment of principal and interest;

(vii) whether funds are to be escrowed (if applicable); and

(viii) whether private mortgage insurance is required (if applicable) and the conditions under which such insurance would no longer be required.

(2) The length of the lock-in period, which must be a time period within which the lender can reasonably expect to close the loan given the prevailing market conditions at time of lock-in; and the consequence of failing to close the loan within the lock-in period. The lock-in period shall commence at the time that the lock-in agreement is binding on the applicant and the

mortgage banker or exempt organization as set forth in this section. This shall not prevent the parties from locking-in a rate that was in effect before the lock-in agreement became binding on both parties, provided that such rate shall not be higher than the rate that would otherwise be locked-in in the lock-in agreement.

(3) A notice printed indicating that if the applicant provides incomplete or incorrect credit information, he may forfeit some or all of his lock-in fee. If the lock-in agreement is typewritten, this notice shall be entirely in upper case letters and underlined. This notice shall be no less conspicuous than any other disclosure made pursuant to this section.

(4) Whether the lock-in fee is refundable, and the terms and conditions necessary to obtain the refund.

(5) The amount of the application fee, and provide a good faith estimate of the credit report fee and property appraisal fee, provided such fees have not been previously disclosed to the applicant.

(6) A list of all property-related documents typically required to be produced by the applicant and property-related conditions typically required to be satisfied by the applicant for closing of a mortgage loan based on the information provided by the applicant as well as any other information the lender knows or reasonably should know at the time a lock-in agreement is issued and a lock-in fee is paid to the lender, provided a commitment has not yet been issued. This list shall include, but need not be limited to, the items set forth in Section 38.4(a)(4) of this Part, but need not include underwriting documents and conditions or specific title exceptions. The disclosures required by this paragraph need not be contained in the lock-in agreement, but may be provided in a separate form referenced in the lock-in agreement and clearly labelled as "Conditions To Be Satisfied for Closing".

(b) Lock-in procedures.

(1) A lock-in fee including any points taken by the lender prior to commitment must be refundable in full if the property appraisal report is not favorable for the product locked-in.

(2) A lock-in fee including any points taken by the lender prior to closing must be refunded in full if an applicant who provided complete and correct credit information as required by an application form is rejected as not creditworthy.

(3) The lock-in agreement shall be binding on both the applicant and the lender when such agreement is signed by the applicant and the lender. This requirement shall be disclosed to the applicant as set forth in this section.

(4) The notice of expiration of the lock-in period required by section 595-a(3)(c) of the Banking Law must be a separate document and must be mailed or electronically transmitted to each individual applicant and, in any joint application, either to a notice recipient, if one has been

designated as such by the applicants or, if none, then to all the applicants not less than twelve (12) business days nor more than twenty (20) business days prior to the expiration of the lock-in period provided such expiration is more than twelve (12) business days from the date the rate is locked irrespective of whether a lock-in fee is paid to the lender. This notice may refer to both the expiration of the commitment period and the lock-in period provided that the notice is timely with regard to the expiration of each.

(5) Both the applicant's signature and the signature of the lender may be hand-written or digital to the extent such digital signatures are recognized as binding under New York State law;

(6) With regard to written lock-in agreements, a duplicate or facsimile copy of the lock-in agreement signed by both the applicant and the lender shall be promptly provided to the applicant;

(7) With regard to electronic lock-in agreements, within three business days of the electronic transmission of a lock-in agreement signed by the lender, a hard-copy of such lock-in agreement shall be mailed to each applicant who indicates that he or she does not have the computer capacity to down-load and print such agreement. Furthermore, in those instances in which a hard copy of the lock-in agreement is not mailed to the applicant, then the lender must be able to demonstrate that information was obtained as to the applicant's computer capacity to down-load and print such agreement;

(8) With regard to electronic notices of expiration, within three business days of the electronic transmission of a notice of expiration, a hard-copy of such notice shall be mailed to each applicant who indicates that he or she does not have the computer capacity to down-load and print such notice. Furthermore, in those instances in which a hard copy of the notice is not mailed to the applicant, then the mortgage banker or exempt organization must be able to demonstrate that information was obtained as to the applicant's computer capacity to down-load and print such notice.

(c) Mortgage brokers, mortgage bankers or exempt organizations acting in a mortgage brokerage capacity. Nothing herein shall be construed to prohibit a mortgage broker, mortgage banker or an exempt organization acting in a mortgage brokerage capacity from taking a lock-in fee for transmittal to a mortgage banker or exempt organization prior to the issuance by the mortgage banker or exempt organization of a commitment provided that prior to the taking of a lock-in fee:

(1) the mortgage broker, mortgage banker or an exempt organization acting in a mortgage brokerage capacity provides the consumer with a lock-in agreement, signed by a mortgage banker or exempt organization, which intends to make the loan, which conforms with the requirements of Part 38.6; and

(2) the lock-in fee is made payable by the applicant to the mortgage banker or an exempt organization which intends to make the loan. A mortgage broker, mortgage banker or an

exempt organization acting in a mortgage brokerage capacity may only take a lock-in fee for transmittal to the mortgage banker or exempt organization which intends to make the loan.

§ 38.7 Prohibited conduct

(a) No mortgage broker, mortgage banker or exempt organization, as is applicable to each entity, shall:

(1) misrepresent or conceal material loan terms, or make false promises to induce an applicant to apply for a mortgage loan. For purposes of this Part, a material term shall mean any item required to be disclosed pursuant to this Part which is likely to influence, persuade or induce an applicant for a mortgage loan to take particular action;

(2) conduct business with an entity which it knows or should know is an unregistered mortgage broker or an unlicensed mortgage banker;

(3) fail to display a copy of a license or a certificate of registration. Licenses and certificates shall be prominently displayed in every public business office frequented by mortgage loan applicants;

(4) fail to provide any of the disclosures in the manner and at the times required by this Part;

(5) fail to make good faith efforts to issue commitments and effect closing in a timely manner;

(6) fail to disclose additional settlement costs or items necessary to close a loan in a reasonable and timely manner;

(7) disburse the mortgage loan proceeds in any form other than, as applicable, direct deposit to customer's account, wire, bank or certified check, or attorney's check drawn on a trust account. Any entity may apply to the [superintendent] Superintendent for a waiver of the requirements of this provision by demonstrating, in a letter application, that it has or shall adopt any other method of disbursement of loan proceeds which shall satisfy the purposes of this paragraph;

(8) fail to disburse funds in accordance with a commitment to make a mortgage loan which is accepted by the applicant;

(9) accept any fees at closing which were not disclosed in accordance with this Part;

(10) accept attorney's fees at closing in excess of the fees that have been or will be remitted to its attorneys;

(11) refuse to permit the borrower to be represented by the attorney of his choice;

(12) unreasonably refuse to issue or unreasonably delay the issuance of a satisfaction of

mortgage after the mortgage has been fully satisfied;

(13) impose a charge on a mortgagor for establishing or maintaining an escrow account or for waiving the establishment or maintenance of an escrow account, provided however, that nothing herein shall prohibit a mortgage banker or exempt organization from imposing a one-time charge to pay the actual cost of an independent tax reporting service, provided such cost is disclosed prior to or at commitment;

(14) include any provision in the mortgage brokerage agreement that is intended to limit or prevent a consumer from submitting an application(s) to obtain a mortgage loan through another mortgage broker(s) or mortgage banker(s) or exempt organization(s) or impose a fee on the applicant should he/she do so; or

(15) accept a good faith deposit or any other deposit to induce the lender to process the loan, whether or not the deposit is refundable.

(16) enter into an employment agreement or otherwise engage any employee or independent contractor who has an employment or independent contractor relationship with any other mortgage banker, mortgage broker or exempt organization, except with the written approval of the [superintendent] Superintendent.

(b) In addition, non-compliance with the following shall also constitute prohibited conduct:

(1) only one application fee and only one processing fee, if any, can be taken in any residential mortgage loan transaction irrespective of whether one or more than one mortgage broker, mortgage banker or exempt organization is involved in the transaction; and

(2) an undertaking of accountability for each independent contractor must be filed with the [superintendent] Superintendent by the employer in such form as may be prescribed within ten days of commencement of employment. In addition, notification of the termination of any independent contractor shall be made to the [superintendent] Superintendent within ten days of such termination.

§ § 38.8 Administrative actions and penalties

(a) Disciplinary action. Banking Law, sections 595 and 595-a provide that a mortgage broker, mortgage banker or exempt organization may be subject to disciplinary action by the Department for violations of Article 12-D, the regulations promulgated thereunder, or violations of state or federal law indicating that the entity is unfit to engage in the business of brokering or making mortgage loans in this State. Disciplinary action may include:

(1) temporary or permanent deletion from the broker roll;

(2) suspension or revocation of a license to engage in the business of mortgage banking; and

(3) fines assessed by the Department, which shall be limited to $ 5,000 per violation, $ 100,000 per proceeding.

(b) Grounds for disciplinary action. A registrant, licensee or exempt organization may be subject to such disciplinary action as may be determined appropriate by the [superintendent] Superintendent after notice and hearing on the following grounds:

(1) fraud or bribery in securing a registration or license;

(2) the making of any false statement in an application for registration, licensing or exemption which false statement would have been grounds for rejection of the application;

(3) the making of any false statement on any form or document requested by the [superintendent] Superintendent for examination or review pursuant to Banking Law Article 12-D, Superintendent's Regulations Part 410, Supervisory Policy and Procedures G 111 or Part 39 of these regulations;

(4) a pattern of conduct indicating incompetence or untrustworthiness;

(5) violation of the disclosure requirements or prohibitions contained in Parts 38.2, 38.3, and 38.4, 38.5, 38.6, and 38.7 hereof;

(6) conviction of any crime which would have a bearing on the fitness or ability of a registrant or licensee to conduct its business; and

(7) failure to perform its duties and responsibilities in an honest, fair and reasonable manner.

(c) Administrative hearings shall be conducted in accordance with Supervisory Policy and Procedure G 111 of this Title.

§ 38.9 Limitation on excess insurance and required disclosures

(a) Limitation on excess insurance. No mortgage banker or exempt organization shall require any mortgagor, in connection with the granting of a mortgage loan, to obtain a hazard insurance policy in excess of the replacement cost of the improvements on the property as a condition for the granting of such mortgage loan.

(b) Required disclosures. Each mortgage banker and exempt organization that requires mortgagors to obtain and/or maintain hazard insurance as a condition to granting any mortgage loan shall at the time of commitment, or if no written commitment will be issued, then at the time of application, furnish in writing or by electronic transmission to each mortgagor:

(1) a statement that hazard insurance will be required;

(2) a statement that the mortgage banker or exempt organization cannot require the mortgagor to obtain or maintain a policy in excess of the replacement cost of the improvements on the property securing the loan.

The disclosures required by this section may be incorporated into the application or commitment or into one or more forms required by State or Federal law or in a separate form. Furthermore, the disclosures required by this section are in addition to any other disclosures required by this Part.

Within three business days of any electronic transmission of this disclosure, a hard-copy of such disclosure shall be mailed to each mortgagor who indicates that he or she does not have the computer capacity to down-load and print such disclosure. Furthermore, in those instances in which a hard copy of the disclosure is not mailed to the mortgagor, the mortgage banker or exempt organization must be able to demonstrate that information was obtained as to the mortgagor's computer capacity to down-load and print such disclosure.

§ 38.10 Notification requirement

Every mortgage banker, mortgage broker and exempt organization shall notify the Mortgage Banking Division of the Department in writing of any administrative, civil or criminal proceeding initiated by any domestic governmental department or agency, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Agency, within twenty (20) days of its commencement, provided such proceeding pertains to residential mortgage lending.

§ 38.11 Requirements for full service and loan solicitation branches

(a) In addition to such application and investigation fees as may be required under Banking Law Article 12-D to establish any branches, with respect to any branch as defined in section 38.1 of this Part, a particular person shall be designated as being responsible for the operation thereof. In addition, such branch stationery, if any, shall include the address and telephone number of the branch or the main office at the licensee's or registrant's option and must use the name of the licensee or registrant. The foregoing requirements shall not apply to mortgage brokers or mortgage bankers having more than 10 branches in New York State.

(b) A licensee or registrant shall not permit the establishment of or the maintenance of a net branch.

(c) Any employee, independent contractor or consultant who works from a place other than a branch as defined in section 38.1 shall be assigned to a specific branch location for purposes of managerial and regulatory oversight. All applicants and borrowers who interact with such employee, independent contractor or consultant must be provided with complete contact information for the branch location to which the employee, independent contractor or

consultant is assigned. All documents pertaining to an application and the correspondent loan, if any, which involve such employee, independent contractor or consultant must go through the branch location to which the employee, independent contractor or consultant is assigned.

§ 38.12 Dual agency transaction disclosures

The dual role performed by the mortgage broker, or a mortgage banker or an exempt entity acting as a mortgage broker, in those instances when the mortgage broker is also the real estate broker in the same residential real estate transaction, must be disclosed at the first substantive contact between the mortgage broker and the buyer/borrower. In addition, any regular business relationship that the mortgage broker maintains with any lender to which he/she presents loan applications, if he/she intends to utilize three or fewer lenders, must also be disclosed at the first substantive contact between the mortgage broker and the buyer/borrower. The appropriate disclosure form and acknowledgment set forth hereunder must be provided to and signed by the buyer/borrower and the seller before services as a mortgage broker may be rendered. The disclosures required by this section may be in writing or via electronic transmission and the required signatures may be hand-written or digital to the extent such signatures are recognized as binding under New York State law. A hard or electronic copy of the disclosure form and signed acknowledgment must be maintained by the mortgage broker for at least three years.

THE FOLLOWING DISCLOSURE AND ACKNOWLEDGMENT APPLY TO THOSE TRANSACTIONS IN WHICH THE REAL ESTATE BROKER REPRESENTING THE SELLER AND THE MORTGAGE BROKER REPRESENTING THE BUYER/BORROWER ARE THE SAME PERSON OR ENTITY.

DISCLOSURE REGARDING DUAL AGENCY ROLE IN RESIDENTIAL REAL ESTATE TRANSACTIONS

I must explain what dual agency means to you.

DUAL AGENCY

1. As a real estate licensee in the pending transaction (Name of Real Estate Broker)represents the seller in the sale of the residential real property and as such the primary responsibility is to the seller.

2. As a mortgage broker _____(Name of Mortgage Broker) represents the buyer/borrower in the acquisition of the mortgage loan and as such the primary responsibility is to the buyer/borrower.

YOUR RIGHTS UNDER DUAL AGENCY

1. I may represent you only with the knowledge and informed consent of each of you.

2. By consenting to Dual Agency you are giving up your right to undivided loyalty. You should carefully consider the possible consequences of a Dual Agency relationship before agreeing to such representation.

3. Since I am not a legal expert or an attorney you may wish to consult one before signing this form.

4. You the buyer may retain the services of a real estate broker or mortgage broker who will represent only you in the transaction.

5. You the seller may, subject to any existing contract of sale and/or any real estate agreement which you have already signed, retain the services of a real estate broker who will represent only you in the transaction.

[] I place mortgage loan applications with three or fewer mortgage lenders.
[] I place mortgage loan applications with more than three mortgage lenders.

ACKNOWLEDGEMENT OF PROSPECTIVE BUYER AND SELLER TO DUAL AGENCY

(1) I have received and read this disclosure notice.

(2) I understand that as a real estate/mortgage broker you may be representing the interests of the seller in the sale of the residential real property and the buyer in the acquisition of the mortgage loan and that you will be unable to offer the full range of fiduciary duties to each of us.

(3) I understand that subject to the terms of any existing contract of sale and/or any real estate agreement which I may have already signed I the seller may engage my own broker as a real estate broker who will not act as a mortgage broker for any potential buyer/borrower in this transaction; or that I as a buyer/borrower may engage my own broker as a mortgage broker and/or my own broker as a real estate broker who will not act as a real estate broker for the seller in this transaction.

[] I understand that you as a mortgage broker will ordinarily place mortgage loan applications with three or fewer mortgage lenders.[] I understand that you as a mortgage broker will ordinarily place mortgage loan applications with more than three mortgage lenders.

DATED: DATED:
SELLER: BUYER:

§ 38.13 FHA mortgage loan correspondents

(a) For purposes of implementing section 590(5-a) of the New York Banking Law, all of the applicable requirements of this Part which pertain to mortgage bankers and exempt

organizations shall also apply to any registered mortgage broker when acting as an FHA mortgage loan correspondent as approved by the [superintendent] Superintendent. In all other instances, the mortgage broker shall remain subject to the requirements of this Part applicable to mortgage brokers.

(b) Notwithstanding any provision of this Part to the contrary, any registered mortgage broker, approved by the [superintendent] Superintendent to act as an FHA mortgage loan correspondent, shall be permitted to advertise that it is an approved FHA mortgage loan correspondent authorized to make FHA insured mortgage loans. Such registered mortgage broker may display a notice that it is approved to make FHA insured mortgage loans.

(c) To the extent not prohibited by federal law, where the requirement promulgated by the Secretary of Housing and Urban Development with regard to acting as an FHA mortgage loan correspondent differ from those of this Part, the FHA mortgage loan correspondent must comply with the requirement which provides greater consumer protection.

(d) No FHA mortgage loan correspondent may accept an application, application fee, credit report fee or property appraisal fee prior to making the following disclosure or one to like effect:

> I am an approved FHA Mortgage Loan Correspondent. Your loan will be underwritten by my FHA approved sponsor. You will be notified of the name of the sponsor simultaneously with the issuance of an interest rate lock-in agreement or commitment to fund, whichever comes first. If the sponsor approves the FHA insured mortgage loan, I will make the mortgage loan to you.

CHAPTER1. SUPERINTENDENT'S REGULATIONS

PART 39

EXEMPT ORGANIZATIONS; SUBSIDIARIES OF EXEMPT ORGANIZATIONS; EXEMPT MORTGAGE PRODUCTS

(Statutory authority: Banking Law §14, art. 12-D)

Sec.

39.1 Purpose
39.2 Definitions
39.3 General provisions
39.4 Organizations Exempt from Licensing or Registration; conditions precedent to exemption from registration or licensing requirements of Article 12-D
39.5 Exempt products

Section 39.1 **Purpose**.

The purpose of this Part is to define the entities engaged in the business of soliciting, negotiating, placing, processing or making mortgage loans secured by a first or junior lien that will be exempt from the registration or licensing requirements of Article 12-D of the Banking Law, and to define mortgage loan products, the brokering or funding of which do not require registration or licensing as a mortgage banker or mortgage broker under Article 12-D.

39.2 **Definitions**.

As used in this Part:

(a) The term *exempt organization* shall mean any insurance company, banking organization, foreign banking corporation licensed by the Superintendent or the Comptroller of the Currency to transact business in this State, national bank, Federal savings bank, Federal savings and loan association, Federal credit union, any bank, trust company, savings bank, savings and loan association, and credit union organized under the laws of any other state; any instrumentality created by the United States or any state with the power to make mortgage loans and any entities exempt pursuant to Section 39.4 of this Part.

(b) The term *exempt product* shall mean any mortgage loan product meeting the requirements of section 39.5 of this Part. The brokering or funding of such products shall not be a business activity requiring registration or licensing pursuant to [article]Article 12-D, nor shall such products be subject to the advertising, solicitation, application and commitment procedures, disclosure requirements or penalty provisions set forth in article 12-D of the Banking Law and Part 38 of this Title.

(c) As used in this Part, terms defined in Section 38.1 of the General Regulations of the Banking Board shall have the same meaning as prescribed therein.

39.3 **General provisions**.

(a) An entity not exempt by New York law which shall otherwise not establish its exempt status in accordance with this Part shall become licensed or registered in accordance with the procedures described in Part 410 of this Title prior to April 1, 1988. Entities exempt under a prior version of this Part that are no longer exempt shall file an application to become licensed or registered prior to April 3, 2012 and shall become licensed or registered by July 2, 2012, or such later date as the [superintendent] Superintendent may approve for good cause.

(b) An exempt organization shall not be relieved of the advertising, solicitation, application and commitment procedures and disclosure requirements set forth in Article 12-D of the Banking Law and Part 38 of this Title or the penalties for violations of such requirements set forth in the Banking Law. An entity exempt from licensing or registration as a mortgage banker or mortgage broker shall not be subject to periodic examination by the Department but may at any time become subject to special investigation. Accordingly, consistent with section 597 of the Banking Law, each such entity shall keep its books and records in a manner which will allow the [superintendent] Superintendent to determine whether such entity is complying with the advertising, solicitation, application and commitment procedures and disclosure requirements prescribed in Part 38 of this Title, except for books and records relating to exempt products. Information and forms regarding recordkeeping can be obtained at: Department of Financial Services, Mortgage Banking [Unit]Division, at the address set forth in section 1.1 of Supervisory Policy G 1. Books and records shall be available for inspection by the [superintendent] Superintendent in accordance with Superintendent's Regulation Part 410 of this Title.

39.4 **Organizations Exempt from Licensing or Registration; conditions precedent to exemptions from registration or licensing requirements of Article 12-D**.

In addition to the entities defined as exempt organizations in Part 39.2 above, the following are exempt from licensing or registration as a mortgage banker or mortgage broker under Article 12-D of the Banking Law or the rules and regulations promulgated thereunder:

(a) **Loan investors**. Persons who acquire mortgage loans from lenders for investment but who do not make mortgage loans shall not be subject to the registration or licensing requirement of article 12-D of the Banking Law or the rules and regulations promulgated thereunder.

(b) **Licensed real estate brokers**. Licensed real estate brokers who or which do not accept a separate fee (in addition to any earned real estate brokerage fee), directly or indirectly, for services performed in connection with the brokering of a mortgage loan shall not be required to be registered as a mortgage broker.

(c) **Mortgage bankers engaged in mortgage brokerage activities**. Section 590 of the Banking Law provides that a license to engage in the business of making mortgage loans shall be deemed to include the authority to engage in the business of soliciting, processing, placing and

negotiating mortgage loans. No additional registration with the department shall be required to engage in the mortgage brokerage business, nor shall additional registration fees be required of any mortgage banker.

(d) **Entities offering mortgage loan products exempt under section 39.5 of this Part**. Entities offering only mortgage loan products that are exempt products pursuant to section 39.5 of this Part are exempt from the registration and licensing requirements of article 12-D of the Banking Law and Part 410 of this Title.

(e) **Not-for-profit organizations**. Not-for-profit organizations may be eligible for exemption from the registration and licensing requirements of article 12-D of the Banking Law. Such organizations which seek exemption may submit a letter application to the Mortgage Banking Division together with such information as may be prescribed by the [superintendent].

39.5 **Exempt products**.

The following loan products are exempt from all of the requirements of Article 12-D of the Banking Law and Part 38 of this Title for the licensing or registration of mortgage bankers and mortgage brokers:

(a) purchase money mortgages extended by a seller to buyers thereof, where the seller is an individual, estate or trust that sells not more than three properties in any 12-month period, provided that the seller has not constructed or acted as a contractor for the construction of a residence being sold.

(b) construction loan mortgages;

(c) relocation mortgage loans. A mortgage loan made by an applicant's employer if the purpose of the loan is to assist the employee to relocate;

(d) any product offered as a mortgage loan by an instrumentality created by the United States or any state; and

(e) such other loan products as may be specifically exempted upon application to the [superintendent] Superintendent.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 41. RESTRICTIONS AND LIMITATIONS ON HIGH COST HOME LOANS

Statutory authority: Banking Law §§ 6-i, 6-l

Sec.

41.1 Definitions
41.2 Limitations
41.3 Prohibited acts and practices
41.4 Additional requirements
41.5 Unfair and deceptive acts or practices
41.6 Multiple borrowers
41.7 Legend
41.8 Exempt products
41.9 Correction of errors
41.10 Good faith reliance
41.11 Single premium insurance; debt cancelation and suspension agreement payments

§ 41.1 **Definitions**

The following definitions shall apply for the purpose of this Part.

(a) "Lender" means a mortgage banker licensed pursuant to article 12-D of the Banking Law or an exempt organization as defined in paragraph (e) of subdivision one of section five hundred ninety of such article. The mortgage banker or exempt organization to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract, shall be deemed to be the lender.

(b) "Affiliate" means any company that controls, is controlled by, or is under the common control of another company. "Control" shall have the same meaning as control of a bank or any other company is defined pursuant to 12 USC* at 1841(a)(2), (3), and (4).

(c) Annual percentage rate means the annual percentage rate for the loan calculated according to the provisions of the Federal Truth-in-Lending Act (15 U.S.C.* section 1601 et seq.), the regulations promulgated thereunder by the Federal Reserve Board, and the official staff commentary thereto. For open-end lines of credit, the annual percentage rate is the highest corresponding annual percentage rate required to be disclosed under sections 226.6(a)(2) and 226.14(b) of title 12 of the Code of Federal Regulations*, excluding any annual percentage rate

imposed solely in the event of default.

(d) "Bona fide loan discount points" means loan discount points knowingly paid by the borrower and funded through any source for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for secondary mortgage market transactions. For purposes of this Part and section 6-l(1)(c) of the Banking Law, it shall be presumed that a point is a bona fide loan discount point if it reduces the interest rate by a minimum of 25 basis points or 1/4 of a point provided all other terms of the loan remain the same.

(e) "High cost home loan" means a residential mortgage loan, including an open-end line of credit but not including a reverse mortgage transaction, in which:

(1) the principal amount of the loan does not exceed the lesser of:

(i) the conforming loan size limit for a comparable dwelling as established from time to time by the Federal National Mortgage Association; or

(ii) $ 300,000;

(2) the borrower is a natural person;

(3) the debt is incurred by the borrower primarily for personal, family or household purposes;

(4) the loan is secured by a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures, intended principally for occupancy of from one to four families, which is or will be occupied by the borrower as the borrower's principal dwelling;

(5) the property is located in New York State; and

(6) the terms of the loan exceed one or more of the following thresholds:

(i) the loan is secured by a first mortgage on the borrower's principal dwelling and the annual percentage rate at consummation, including without limitation any points and/or bona fide discount points, will exceed by more than eight percentage points the yield on United States

Treasury securities having comparable periods of maturity to the loan maturity measured as of the 15th day of the month immediately preceding the month in which the application for the residential mortgage loan is received by the lender; provided, however, if the terms of such loan offer any initial or introductory rate, and the annual percentage rate is less than such rate that will apply after the end of the period of such initial or introductory rate, then the annual percentage rate for purposes of determining the application of this threshold to such loan shall be the rate which applies after such initial or introductory period; or

(ii) the loan is secured by a junior mortgage on the borrower's principal dwelling and the annual percentage rate at consummation, including without limitation any points and/or bona fide discount points, will exceed by nine or more percentage points the yield on United States Treasury securities having comparable periods of maturity to the loan maturity measured as of the 15th day of the month immediately preceding the month in which the application for the residential mortgage loan is received by the lender; provided, however, if the terms of such loan offer any initial or introductory rate, and the annual percentage rate is less than such rate that will apply after the end of the period of such initial or introductory rate, then the annual percentage rate for purposes of determining the application of this threshold to such loan shall be the rate which applies after such initial or introductory period; or

(iii) the total points and fees payable exceed (1) five percent of the total loan amount if such amount is $ 50,000 or more; or (2) six percent of the total loan amount if such amount is $ 50,000 or more and the loan is a purchase money loan guaranteed by the Federal Housing Administration or the U.S. Department of Veterans Administration; or (3) the greater of six percent of the total loan amount or $ 1500 if such amount is less then $ 50,000. Bona fide loan discount points payable by the borrower in connection with the loan transaction, up to and including two such points, may be excluded from the calculation of the total points and fees payable by the borrower for purposes of this paragraph but only if the loan's interest rate that is to be discounted is not greater than one percent above the yield on United States Treasury securities having comparable periods of maturity to the loan maturity measured as of the fifteenth day of the month immediately preceding the month in which the application is received; or bona fide discount points may be discounted that are funded directly or indirectly through a grant from a federal, state or local government agency or a not-for-profit organization having a taxable status under section 501(c)(3) of the Internal Revenue Code.

(iv) In determining the applicable yield on United States Treasury securities pursuant to subparagraphs (i) and (ii) of this paragraph, the lender may utilize the yield published by the Department on its website or the yield as determined by reference to section 226.32(a) of Title 12 of the Code of Federal Regulations and the official staff commentary thereto, provided that

the lender notes in the loan file which yield is being utilized and uses that yield consistently. This publication may be viewed at the New York City office of the New York State Department of Financial Services located at the address stated in Supervisory Policy G1 of Title 3 of the NYCRR and the Department of State located at 41 State Street, Albany, NY 12231.

(f) "Total loan amount" means the principal of the loan minus those points and fees as defined in paragraph (h) of this section that are included in the principal amount.

(g) "Borrower" refers to a natural person and shall be deemed to include a co-borrower or co-signer obligated to repay a high cost home loan.

(h) Points and fees means (i) all items listed in 15 U.S.C.* § 1605(a)(1) through (4), except interest or the time-price differential; (ii) all charges for items listed under section 226.4(c)(7) of title 12 of the Code of Federal Regulations but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; and (iii) all compensation paid directly or indirectly to a mortgage broker not otherwise included as points and fees pursuant to clauses (i) and (ii) of this subdivision 41.1(h). Any payments to finance premiums for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life or health insurance, or any debt cancellation or suspension agreement or contract, whether or not interest is charged, shall constitute points and fees for purposes of this Part and section 6-l of the Banking Law. Credit property insurance shall not be deemed to include insurance coverage for fire, miscellaneous property, or water damage, as defined pursuant to section 1113 of the Insurance Law, placed upon such mortgaged property. Payments for title insurance premiums related to such mortgaged property and payments for premiums for insurance required by the lender that guarantees payment of all or part of the outstanding principal loan amount upon the default of the borrower, which shall include but not be limited to private mortgage insurance, the Federal Housing Administration mortgage insurance premium fee, and the U.S. Veterans Administration funding fee, or any fee charged by the Federal National Mortgage Association or the Federal Mortgage Assistance Corporation that provides for a similar guarantee of such payment, shall not constitute points and fees for purposes of this Part and section 6-l of the Banking Law. Any payments for a mortgage recording tax shall not constitute points and fees for purposes of this Part and section 6-l of the Banking Law.

(i) "Scheduled monthly payments" means minimum sums required to be paid with respect to all of the borrower's debts that are reported on a nationally recognized consumer credit bureau report and the monthly mortgage payment due under the high cost home loan (ignoring any reduction arising from a lower introductory rate) plus one twelfth of the annualized cost of real

estate tax and insurance premium payments during the immediately preceding 12 months. Scheduled monthly payments shall not include any debts that are consolidated with or paid off by the high cost home loan.

(j) "Unconscionable" means oppressive or unreasonably harsh or unfair, considering all of the circumstances of the loan transaction as such term unconscionable is described in the Official Comment and New York Annotations for section 2-302 of the Uniform Commercial Code. For purposes of this Part, the singular shall include the plural.

§ 41.2 **Limitations**

A high cost home loan shall be subject to the following limitations.

(a) No call provision. No high cost home loan may contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply when repayment of the loan has been accelerated in good faith, due either to a bona fide default or other failure of the borrower to abide by the material terms of the loan, or pursuant to a due-on-sale provision, or pursuant to some other provision of the loan agreement unrelated to the payment schedule such as bankruptcy or receivership.

(b) No balloon payment. No high cost home loan may contain a scheduled final payment that is more than twice as large as the average of earlier scheduled monthly payments unless such balloon payment becomes due and payable at least fifteen years after the loan's origination. This prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the borrower or if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling. This subdivision shall not apply to open-end high cost home loans.

(c) No negative amortization. Notwithstanding any statute or regulation to the contrary, no high cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase. This shall not prohibit negative amortization as a consequence of a temporary forbearance sought by the borrower. This subdivision shall not apply to open-end high cost home loans.

(d) No increased interest rate. No high cost home loan may contain a provision that increases the interest rate after default. This provision does not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan agreement, provided the change in the interest rate is not occasioned by the event of default or the acceleration of

the indebtedness.

(e) No oppressive mandatory arbitration clause. No high cost home loan may be subject to a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers. Arbitration clauses that comply with the standards set forth in the Statement of Principles of the National Consumer Dispute Advisory Committee, as such Statement is on file at the New York State Department of Financial Services, shall be presumed not to violate this subdivision. The Statement of Principles may be viewed at the New York State Department of Financial Services located at the New York City office of the New York State Department of Financial Services located at the address stated in Supervisory Policy G1 of Title 3 of the NYCRR or through internet access at http://www.banking.state.ny.us/41.htm.

(f) No advance payments. No high cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

§ 41.3 **Prohibited acts and practices**

The following acts and practices are prohibited in the making of a high cost home loan.

(a) No lending without counseling disclosure and list of counselors and consumer and home ownership counseling notice.

(1) A lender or mortgage broker must deliver, place in the mail, fax or electronically transmit the following notice in at least 12-point type to the borrower at the time of application: "You should consider financial counseling prior to executing loan documents. The enclosed list of counselors is provided by the New York State Department of Financial Services. In the event that the lender or broker does not know whether the borrower's application is a high cost home loan application, such disclosure must be made as soon as the lender determines that it is a high cost home loan application. In the event of a telephone application, the disclosures must be made immediately after receipt of the application by telephone. Such disclosure shall be on a separate form. In order to utilize an electronic transmission, the lender or broker must first obtain either written or electronically transmitted permission from the borrower. A list of approved counselors, available from the New York State Department of Financial Services, shall be provided to the borrower by the lender or the mortgage broker at the time that this disclosure is given. The lender or mortgage broker may provide to the borrower the entire list of counselors or those portions of the list which pertain to both the geographic area in which the borrower resides and any adjacent area or areas.

(2) Within three days after determining that the loan is a high cost home loan, but no less than ten days before closing, a lender or mortgage broker shall not make or arrange a high cost home loan unless either the lender or the mortgage broker has delivered to the borrower in writing, either placed in the mail, faxed or electronically transmitted, the following notice in at least twelve-point type:

"CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

If you obtain this loan, which pursuant to New York State Law is a High-Cost Home Loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

You should shop around and compare loan rates and fees. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. The loan rate and fees could vary based on which lender or mortgage broker you select. Higher rates and fees may be related to the individual circumstances of a particular consumer's application.

You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. The enclosed list of counselors is provided by the New York State Department of Financial Services.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors. Accordingly, it is important that you make regular payments to your existing creditors."

If the notice required by this paragraph is given to the borrower separately from counseling notice required by paragraph (1) of this subdivision, then the list of counselors so enclosed in the counseling notice disclosure shall be enclosed also with this disclosure notice. Such disclosure shall be on a separate form. In order to utilize an electronic transmission, the lender or broker must first obtain either written or electronically transmitted permission from the borrower.

(b) No lending without due regard to repayment ability. A lender or mortgage broker may not make or arrange a high cost home loan unless the lender reasonably believes at the time the loan is consummated that the borrower or the borrowers (when considered collectively in the case of multiple borrowers) will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan) as verified by detailed documentation of all sources of income and corroborated by independent verification. A lender shall benefit from a rebuttable presumption that a borrower is able to make the scheduled payments to repay the obligation, if, at the time the high cost home loan is consummated, or at the time of the first rate adjustment in the case of a lower introductory interest rate, the borrower's scheduled monthly payments do not exceed 50 percent of the borrower's monthly gross income as verified by the credit application, the borrower's financial statement, a credit report, financial information provided to the lender by or on behalf of the borrower, or any other reasonable means, and the lender, in making such high cost home loan, follows the residual income guidelines pursuant to section 36.4337(e) of Title 38 of the Code of Federal Regulations and U.S. Veterans Administration VA Form 26-6393. VA Form 26-6393 may be viewed at the New York City office of the New York State Department of Financial Services located at the address stated in Supervisory Policy G1 of Title 3 of the NYCRR or by internet access at http://www.vba.va.gov/pubs/homeloanforms.htm. The U.S. Veterans Administration residual incomes for the northeast region may be viewed at the New York City office of the New York State Department of Financial Services located at the address stated in Supervisory Policy G1 of Title 3 of the NYCRR or by internet access at http://www.banking.state.ny.us/41.htm. A borrower's repayment ability shall be presumed "corroborated by independent verification" for purposes of this Part and section 6-l(2)(k) of the Banking Law if the borrower's income, employment status, obligations, and other financial resources are verified by documents prepared by persons or entities having no direct relationship with the lender or mortgage broker or a relationship with the borrower, other than an employment, debtor-obligor, or fiduciary relationship, or by governmental documents, such as an income tax return. For purposes of determining monthly income, only the income of the borrower(s) shall be considered.

(c) Financing of points and fees. In making a high cost home loan, a lender may not require a borrower to directly or indirectly finance any portion of the points and/or fees, in an amount that exceeds three percent of the principal amount of a closed end high cost home loan, or of the maximum line of credit amount for open end high cost home loans, for loans other than refinancings. For refinancings, a lender may not finance such points or fees in an amount that exceeds three percent of the additional proceeds received by the borrower in connection with the refinancing. In making a high cost home loan, a lender may not finance voluntary credit, disability, unemployment and/or life insurance as part of the principal amount of the loan, whether interest is charged or not. In making a high cost home loan, a lender may not directly or indirectly finance any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the originator of the loan being refinanced. For purposes of this subsection 41.3(c), "additional proceeds" for a closed end loan is the amount over and above the current principal balance of the existing home loan. For an open end loan, "additional proceeds" is the amount by which the line of credit on the new loan exceeds current principal balance of the existing home loan.

(d) Refinancing and modification of existing high cost home loan.

(1)(i) A lender shall not charge a borrower points and fees in connection with a high cost home loan if the proceeds of the high cost home loan are used to refinance an existing high cost home loan held by the lender or an affiliate of the lender.

(ii) In all other instances, a lender may not charge a borrower points and fees in connection with a high cost home loan if the proceeds of the high cost home loan are used to refinance an existing high cost home loan and the last financing was within two years of the current refinancing. This provision shall not prohibit a lender from charging points and fees in connection with any additional proceeds received by the borrower in connection with the refinancing, provided that the points and fees charged on the additional sum must reflect the lender's typical point and fee structure for high cost refinance loans. For purposes of this subdivision 41.3(d), "additional proceeds" for a closed end loan is the amount over and above the current principal balance of the existing high cost home loan. For an open end loan, "additional proceeds" is the amount by which the line of credit on the new loan exceeds current principal balance of the existing high cost home loan.

(2) A lender may not charge a borrower any fees to modify, renew, extend, or amend a high cost home loan or defer any payment due under a high cost home loan if, after the modification, renewal, extension or amendment, the loan is still a high cost loan or, if no longer

a high cost home loan, the annual percentage rate has not been decreased by at least two percentage points. For purposes of this paragraph, fees do not include interest that is otherwise payable and consistent with the provisions of the loan documents. This provision shall not prohibit a lender from charging points and fees in connection with any additional proceeds received by the borrower in connection with the modification, renewal, extension or amendment (over and above the current principal balance of the existing high cost home loan) provided that the points and fees charged on the additional sum must reflect the lender's typical point and fee structure for high cost home loans. This provision shall not apply if the existing high cost home loan is in default or is sixty (60) or more days delinquent and the modification, renewal, extension, amendment or deferral is part of a work-out process.

(e) Restrictions on home improvement contracts. A lender may not pay a contractor under a home-improvement contract from the proceeds of a high cost home loan other than by an instrument payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement of funds to the contractor.

(f) No refinancing of special mortgages. No lender making a high cost home loan may refinance an existing mortgage loan that is a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which either bears a below-market interest rate at the time of origination, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage, unless the lender is provided prior to loan closing documentation by a U.S. Department of Housing and Urban Development certified housing counselor or the lender who originally made the special mortgage that a borrower has received home loan counseling in which the advantages and disadvantages of the refinancing has been received.

(g) List of counselors, residual income guidelines and yield on United States Treasury securities. The list of counselors in subdivision (a) of this section, the residual income guidelines in subdivision (b) of this section, and the yield on the United States Treasury securities in section 41.1(e) of this Part shall be published by the Department on its web site. Lenders may rely upon and use such information until ninety days after the Department publishes new information on its website.

§ 41.4 **Additional requirements**

The following are required in order to make a high cost home loan.

(a) Mortgage brokers and lenders must give the disclosures required pursuant to Part 38 of this Title, as applicable, to the borrower and any other obligor in writing at the time of application which shall be at least ten days prior to the closing whether or not funds are then disbursed. In addition, at or prior to taking an application, mortgage brokers and lenders must also deliver, place in the mail, fax or electronically transmit to the borrower a statement in substantially the following form: "Although your aggregate monthly debt payment may decrease, the high cost home loan may increase both (i) your aggregate number of monthly debt payments and (ii) the aggregate amount paid by you over the term of the high cost home loan" if such are likely the case. This disclosure need not be a separate document. A lender may agree with a broker that the broker shall make the disclosures required by this Part and Part 38 of this Title on behalf of the lender. However, it remains the responsibility of the lender to ensure that such disclosures are made. In the event that the lender or broker does not know whether the borrower's application is a high cost home loan application, such disclosure must be made within three days after the lender determines that it is a high cost home loan application, but in any event, at least ten days prior to the closing. In the event of a telephone application, the disclosure must be made within three days after receipt of the application by telephone, but in any event, at least ten days prior to the closing. In order to utilize electronic transmission, the lender or broker must first obtain either written or electronically transmitted permission from the borrower.

(b) The lender must report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit bureau at least annually during such period as the lender holds or services the high cost home loan.

(c) Mortgage brokers and lenders that broker or make 10 or more high cost home loans per year must report to the Department annually, on or before March 31st in each year, the names and addresses of the three home improvement contractors, the three consultants and the three attorneys who obtain the largest number of payments directly from the proceeds of high cost home loans made or brokered by the lender or mortgage banker. They must also provide the names and addresses of any home improvement company that is an affiliate. This provision shall not apply to attorneys in their capacity as closing attorneys for lenders.

(d) The following statement in a minimum of 12-point type must appear directly above the borrower's signature line on the application: "The loan which may be offered to you is not necessarily the least expensive loan available to you and you are advised to shop around to determine comparative interest rates, points and other fees and charges." In the event of telephone applications, this disclosure shall be made to the borrower within three days of receipt of an application, but in any event at least ten days prior to the closing whether or not funds are then disbursed. In the event that the lender or broker does not know whether the borrower's application is a high cost home loan application, such disclosure must be made

within three days after the lender determines that it is a high cost home loan application, but in any event, at least ten days prior to closing whether or not funds are then disbursed. If the mortgage application form is prescribed by a government-sponsored entity, such statement shall be placed on a separate document and attached to the front of the mortgage application.

§ 41.5 **Unfair and deceptive acts or practices**

The following acts shall be prima facie evidence that the lender does not possess the requisite character and fitness required to be licensed or registered by the New York State Department of Financial Services:

(a) the making of high cost home loans that demonstrate a pattern and practice of violating any provision of this Part. The provisions of this section shall apply to any lender that seeks to avoid its application by any device, subterfuge or pretense whatsoever, which shall include but not be limited to splitting or dividing any loan transaction into separate parts for the purpose of evading the provisions of this Part and section 6-l of the Banking Law;

(b) engaging in unfair, deceptive or unconscionable practices in the course of advertising, brokering or making high cost home loans to residents of this State. Such practices include, but are not limited to, the following:

(1) brokering or making a high cost home loan which includes points, fees or other finance charges that, considering the loan transaction as a whole (including the creditworthiness of the borrower, the terms of the loan, the value of the collateral, and the owner's equity in the collateral), so significantly exceed the usual and customary charges incurred by mortgage consumers generally in this State for such points, fees or other finance charges as to be unconscionable;

(2) brokering or making high cost home loans in which the broker or lender charges and retains fees in any manner or form:

(i) for services that are not actually performed;

(ii) for which the fees bear no reasonable relationship to the value of the services actually performed; or

(iii) which are otherwise unconscionable;

(3) brokering or making high cost home loans with repayment terms that so exceed the borrower's financial capacity to repay as to be unconscionable. A loan that complies with section 41.3(b) of this Part shall be presumed not to violate this paragraph. Evidence that the repayment terms exceed the borrower's reasonable capacity to repay may be rebutted by:

(i) a showing that the lender reasonably believed at the time the loan was consummated that

the borrower and any obligor had the capacity to repay the loan based upon consideration of their current and expected income, current obligations, employment status, and other financial resources, excluding the owner's equity in the dwelling that secures repayment of the loan and including any other collateral securing repayment of the loan; or

(ii) a showing that other compelling circumstances existed that justified the making of the loan notwithstanding the borrower's apparent lack of capacity to repay the loan based upon the factors stated in subparagraph (i) of this paragraph;

(4) "flipping" high cost home loans; that is, brokering or making a high cost home loan to a borrower that refinances an existing mortgage loan when, considering all the circumstances of the refinancing, such refinancing does not have a tangible net benefit to the borrower. A lender shall be considered by the [superintendent] Superintendent to have provided a tangible net benefit to the borrower if a high cost home loan meets the following criteria: the borrower receives a monetary benefit, such as receipt of additional proceeds, a reduction of the outstanding mortgage debt, a lowering of the annual percentage rate, and/or a lowering of the monthly payments of principal and interest, taking into consideration the totality of the circumstances, including, but not limited to, the amount of the monetary benefit, the loan product and the borrower's repayment ability, current and expected income and current obligations; provided, however, that if the monthly payment of principal and interest and/or the mortgage debt increases, a commensurate monetary benefit shall ensue to the borrower;

(5) "packing" high cost home loans; that is, the practice of selling credit life, accident and health, disability, property, or unemployment insurance products, any other life or health insurance product, debt cancellation or suspension agreement products, or unrelated goods or services in conjunction with a high cost home loan without the informed consent of the borrower under circumstances where:

(i) the broker or lender solicits the sale of such products, goods or services; and

(ii) the broker or lender receives direct or indirect compensation for the sale of such products, goods or services; provided, however, it shall not constitute the practice of "packing" if the broker or lender, at least ten business days before the loan is closed whether or not funds are then disbursed, makes a separate oral and a separate clear and conspicuous written disclosure in at least twelve point type to the borrower containing the following information: (i) the cost of such products or other goods and services; (ii) the fact that such products, goods, or services, as offered to the borrower by the broker or lender, will be either prepaid or calculated, earned, and paid on a monthly or other regular, periodic basis; and (iii) that the purchase of such products, goods or services is not required to obtain the mortgage loan. In addition, the written disclosure shall contain a signed and dated acknowledgment by the borrower(s) that the oral disclosure was made and a signed and dated acknowledgment by the broker or lender that the oral disclosure was made;

(6) recommending or encouraging default or further default by a borrower on an existing loan

or other debt, prior to and in connection with the closing or planned closing of a high cost home loan that refinances all or any portion of such existing loan or debt; or

(7) advertising that refinancing pre-existing debt with a high cost home loan will reduce a borrower's aggregate monthly debt payment without also disclosing, if such are likely the case, that the high cost home loan will increase both:

(i) a borrower's aggregate number of monthly debt payments; and

(ii) the aggregate amount paid by a borrower over the term of the high cost mortgage loan.

§ 41.6 **Multiple borrowers**

Where there is more than one borrower on a high cost home loan, and this Part requires a notice to be given or a signature obtained, such requirement shall be deemed satisfied by the delivery or placing in the mail to, or obtaining the signature of, any borrower who is primarily liable on the high cost home loan.

§ 41.7 **Legend**

High cost home loan mortgages shall include a legend on top of the mortgage in 12-point type stating that the mortgage is a high cost home loan subject to this Part and section 6-l of the Banking Law. If the mortgage document form is prescribed by a government-sponsored entity, such legend shall be placed on a separate document and attached to the front of the mortgage document.

§ 41.8 **Exempt products**

Certain products offered as a mortgage loan by an instrumentality of the United States or of any state shall be exempt from this Part such as loan products offered by the SONYMA.

§ 41.9 **Correction of errors**

A lender of a high cost home loan that, when acting in good faith, fails to comply with the provisions of this section, will not be deemed to have violated this Part and section 6-l of the Banking Law if the lender establishes that either:

(a) Within thirty days of the loan closing and prior to the institution of any action under section 6-l of the Banking Law, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high cost home loan satisfy the requirements of this Part, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan is no longer a high cost home loan subject to the provisions of this Part; or

(b) The compliance failure resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors and, within sixty days after the discovery of the compliance failure and prior to the institution of any action under section 6-l of the Banking Law or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high cost home loan satisfy the requirements of this Part, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan is no longer a high cost home loan subject to the provisions of this Part. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this Part is not a bona fide error.

§ 41.10 **Good faith reliance**

A lender or assignee may not be held liable under this Part for any act done or omitted in good faith in conformity with any rule, regulation, release, bulletin, or interpretation thereof by:

(a) the Department; or

(b) with respect to provision of this Part that follow provision of the Federal Truth-in-Lending Act, the Federal Reserve Board or any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the board to issue such interpretations or approvals under such procedures as the board may prescribe therefore, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§ 41.11 **Single premium insurance; debt cancellation and suspension agreement payments**

No lender or Affiliate shall finance single premium credit life, accident, health, disability, or loss of income insurance, or any other life or health insurance premiums, in connection with a high cost home loan subject to this Part, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that such insurance premiums or payments calculated and paid on a monthly basis shall not be considered so financed.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER I. [GENERAL] SUPERINTENDENT'S REGULATIONS [OF THE BANKING BOARD]

PART 50. MUTUAL TRUST INVESTMENT COMPANIES

Statutory authority: Banking Law, § 14(1)

Sec.

REGULATION AND SUPERVISION
50.1 Examinations
50.2 Reports
50.3 Subpoena
50.4 Removal of directors and officers
ACCOUNTING RECORDS
50.10 Accounting records
50.11 Register
VALUATION INVESTENTS
50.20 Time of valuation
50.21 Method of valuation
50.22 Valuation schedule
INVESTMENTS AND REDEMPTIONS
50.30 Basis and time investments and redemptions
50.31 Distribution of income
50.32 Periodic statements
LIMITATIONS
50.40 Investments of mutual trust investment company
50.41 investments in mutual trust investment company
50.42 True fiduciary purposes
LIQUIDATING ACCOUNT
50.50 Transfer of investment to liquidating trust
50.51 Schedule of interests in liquidating account
50.62 Effect of termination
TERMINATION
50.60 Action of board of directors
50.61 Direction of Banking Board
50.62 Effect of termination
MISCELLANEOUS
50.70 Mutual trust investment company
50.71 Inspection of records by persons interested
50.72 Effect of mistakes

REGULATION AND SUPERVSION

§ 50.1 **Examinations**

The [superintendent] Superintendent shall have the power to examine every mutual trust investment company at any time prior to its dissolution whenever in his judgment such examination is necessary or advisable. He shall at least once in each calendar year, upon such date or dates within each such period as in his discretion he deems proper, cause every such mutual trust investment company to be examined. On every such examination of any mutual trust investment company, inquiry shall be made as to:

(a) its financial condition;

(b) the policies of its management;

(c) whether the requirements of law and these regulations have been complied with in the administration of its affairs; and

(d) such other matters as the superintendent may prescribe.

For the purpose of conducting such examination of a mutual trust investment company, the superintendent shall have the power to examine relevant books, records, accounts and documents held or maintained by any custodian for the account of the mutual trust investment company or any other person, firm or corporation which shall render managerial, investment, advisory, statistical or other services to the mutual trust investment company. All reports of examinations and investigations, including any duly authenticated copy or copies thereof in the possession of the mutual trust investment company, shall be confidential communications, shall not be subject to subpoena, and shall not be made public unless in the judgment of the superintendent the ends of justice and the public advantage will be subserved by the publication thereof, in which event he may publish a copy of any such report or any part thereof in such manner as he may deem proper.

§ 50.2 **Reports**

The superintendent may require any mutual trust investment company to make such regular and special reports to him at such times as he may prescribe. The superintendent may prescribe the form and contents of all such periodical and special reports.

§ 50.3 **Subpoena**

The power of subpoena, set forth in Banking Law, section 38, shall extend to all matters relating to the affairs of any mutual trust investment company.

§ 50.4 **Orders of the [superintendent]** Superintendent

The power of the [superintendent] Superintendent to issue an order to appear and explain an apparent violation, to discontinue unauthorized or unsafe practices and to keep books and accounts as prescribed, as set forth in Banking Law, section 39(1), (2) and (5), shall apply to any mutual trust investment company with the same force and effect as if mutual trust investment companies were specifically mentioned in each such subdivision.

§ 50.5 **Removal of directors and officers**

Directors and officers of any mutual trust investment company shall be subject to removal, under Banking Law, section 41, with the same force and effect as if mutual trust investment companies were specifically mentioned in such section.

ACCOUNTING RECORDS

§ 50.10 **Accounting records**

A complete set of accounting records shall be maintained by the mutual trust investment company. Such records shall clearly distinguish items of principal from items of income of such company.

§ 50.11 **Register**

A register shall be maintained by the mutual trust investment company, showing with respect to each stockholder:

(a) the date of each investment, the number of shares purchased and the amount paid therefor;

(b) the date of each redemption, the number of shares redeemed, the amount paid on redemption and whether payment was made in cash, in kind, or partly in cash and partly in kind;

(c) the number of shares currently held; and

(d) the shares in any liquidating account.

Valuation Investments

§ 50.20 **Time of valuation**

Investments shall be valued by the mutual trust investment company as of the opening of business on the last business days of January, April, July and October of each year, and such

other date or dates as the board of directors of the mutual trust investment company shall designate.

§ 50.21 **Method of valuation**

The following method shall be used in the valuation of investments:

(a) Investments shall be valued by reference to appropriate valuations applied by a generally accepted pricing service, or by the methods set forth below. All estimates, quotation sheets and valuations used for valuations shall be retained in the records of the mutual trust investment company.

(b) (1) In the case of an obligation of the United States, or of an obligation for which the faith of the United States is pledged for the payment of the interest and principal, the mutual trust investment company shall use for the valuation of such investment the mean of the most recent dealer bid and asked prices appearing within the five business days next preceding the valuation date in newspapers of general circulation published in the City of New York, in standard financial periodicals or in current dealer communications. Obligations of the United States which may be redeemable at less than par prior to maturity or which are not saleable without exchange shall be valued at par.

(2) In the case of a security listed on a national securities exchange registered under section 6 of the Federal Securities Exchange Act of 1934, or on the NASDAQ National Market, the mutual trust investment company shall use for the valuation thereof the last reported sale price, unless there have been no reported sales within the five business days preceding the valuation date in which event the most recent bid price shall be used. For the purpose of this paragraph, reported sales prices and bid prices shall be those appearing in newspapers of general circulation published in the city of New York, in standard financial periodicals, or on the records of a registered national exchange or the National Association of Securities Dealers. If the mutual trust investment company believes that the last reported sales price or bid price does not fairly represent the values of the security, then the company may, after expressing that view in writing for its records along with the reasons for it, use as an alternative the valuation method in paragraph (3) of this subdivision.

(3) If neither recorded sales nor bid and asked prices are available as provided above, and in the case of all investments other than those mentioned above, except investments in mortgages, the mutual trust investment company shall obtain from not less than two bankers, brokers, dealers or other persons qualified in the opinion of the mutual trust investment company to give an opinion as to the value of the investment in question a written estimate of the value of such investment as of the close of business on the last business day prior to the valuation date. The average of such estimates shall be used, and each such estimate shall be retained in the records of the mutual trust investment company.

(c) For the purposes of this Part, a business day shall mean a day when the New York Stock

Exchange or the American Stock Exchange is open for business.

(d) In the case of investments in mortgages, the mutual trust investment company shall secure, prior to any valuation date, from not less than two persons qualified in the opinion of the mutual trust investment company to give an opinion as to the value of the mortgage in question, a written estimate of the value of such mortgage. At least one of the persons making such valuation shall not have participated in the marking of the last preceding valuation. The average of such estimates shall be used and each such estimate shall be retained in the records of the mutual trust investment company. Notwithstanding the foregoing, in the event that the mutual trust investment company shall have in its files such a written estimate of value made within one year of the valuation date, such estimate may be used. The real estate securing each such mortgage investment shall be appraised at least once every three years by two persons, one of whom shall not have participated in the last preceding appraisal of such real estate. Such persons shall be appointed by the mutual trust investment company and shall, in the opinion of such mutual trust investment company, be familiar with real estate values in the vicinity in which such real estate is situated and qualified to make such appraisals. The persons so appointed shall actually inspect such real estate and shall so certify in a written certificate of appraisal, which shall be filed and preserved in the records of the mutual trust investment company. In preparing a written estimate of the value of any mortgage, due consideration shall be given, by the persons making such valuation, to the last written certificate of appraisal of the property covered by such mortgage.

(e) In the case of a stock where a dividend has been declared but has not been paid and the amount of such dividend has been considered as income under the bylaws of the mutual trust investment company, the amount of such dividend shall be deducted from the price of the stock in determining its value unless such price shall be an ex-dividend price.

(f) An investment purchased and awaiting payment against delivery shall be included for valuation purposes as a security held, and the cash amount shall be adjusted to reflect the purchase price, including brokers' commissions and other expenses incurred in the purchase thereof but not disbursed as of the valuation date.

(g) An investment sold but not delivered pending receipt of proceeds shall be valued at the net sales price.

(h) For the purpose of valuation of an investment, except an investment sold but not delivered, it shall not be necessary to deduct from the value ascertained, as provided above, brokers' commissions or other expenses which would be incurred upon a sale thereof.

(i) There shall be deducted from any gross asset value, computed as aforesaid, the amount of all expenses incurred and accrued and unpaid, such reserves as may be set up to cover taxes and any other liabilities, and such other deductions as in the opinion of the board of directors are in accordance with sound accounting practices.

§ 50.22 **Valuation schedule**

(a) Within 10 business days after any valuation date, the mutual trust investment company shall cause to be prepared a schedule of investments, as of the valuation date, which shall contain:

(1) a description of each security issue or investment;

(2) its face value;

(3) its value as carried on the books of the mutual trust investment company; and

(4) its value as determined as of such valuation date.

(b) Each such schedule shall be certified by one or more of the members of the board of directors of the mutual trust investment company and filed as a permanent record of the mutual trust investment company.

INVESTMENST AND REDEMPTIONS

§ 50.30 **Basis and time of investments and redemptions**

(a) For the purpose of investment and redemption of shares of the mutual trust investment company, the principal of the fund shall be determined by adding to the value of the investments, as determined in accordance with the provisions of sections 50.20-50.22 of this Part, the uninvested cash principal and other items of principal, and by deducting from the total thereof any liabilities, due or accrued, chargeable to principal. For the purpose of computing the value per share, the principal thus determined shall be divided by the number of existing shares and such share value, together with a sum equal to the proportionate share of any income held or accrued and remaining undistributed at the valuation date, shall be the basis for investment in and redemption of shares of the mutual trust investment company. In determining the value of a share, fractions less than one-hundredth percent of the original share value may be omitted. No investment in or redemption from the mutual trust investment company shall be permitted except on the basis of such valuation and as of such valuation date. A reasonable period, not to exceed seven calendar days, following each valuation date may be used to make the computations necessary to determine the value of the fund and of the shares therein. No investment in or redemption from the mutual trust investment company shall be permitted unless a written request for, or notice of intention of, taking such action as of a specified valuation date shall have been received by the transfer agent for the mutual trust investment company shares on or before the last business day prior to the specified valuation date.

(b) When redemptions of shares are made by the mutual trust investment company, distributions may be made in cash or rateably in kind, or partly in cash and partly rateably in

kind, provided that all distributions as of any one valuation date shall be made on the same basis. Before any distribution in cash is made, the mutual trust investment company shall determine whether any investment remaining in the mutual trust investment company has ceased to be eligible as a new investment of such mutual trust investment company, and no distribution shall be made in cash until any such investment shall have been eliminated from the mutual trust investment company either through sale, distribution in kind, or segregation as provided in sections 50.50-50.52 of this Part.

§ 50.31 **Distribution of income**

The income of the mutual trust investment company shall be computed on the accrual basis and the apportionment of income shall be determined at each valuation date. The income shall be distributed to shareholders not less frequently than quarterannually, either on the basis of income accrued or on the basis of income actually received. To facilitate the distribution of accrued but uncollected income, the cash principal of the mutual trust investment company may be used to the extent necessary to purchase income accrued.

§ 50.32 **Periodic statement**

(a) Within 10 business days after any valuation date, the mutual trust investment company shall cause to be prepared, as of the opening of business on such valuation date, a statement of condition of the mutual trust investment company on the basis of such valuation, showing separately the items of principal and income, and containing a memorandum of the following:

(1) the number of shares outstanding;

(2) the value per share; and

(3) the income per share since the preceding valuation date.

(b) Such periodic statements of condition shall be certified by one or more of the members of the board of directors of the mutual trust investment company and retained as permanent records of the mutual trust investment company.

LIMITATIONS

§ 50.40 **Investments of mutual trust investment company**

(a) A mutual trust investment company may invest only in such investments as are legal investments for fiduciaries under the Estates, Powers and Trusts Law, section 11-2.2(a)(1).

(b) No investment for the mutual trust investment company shall be made in stocks or bonds or other obligations of any one person, firm or corporation which would cause the total amount of investment in stocks or bonds or other obligations issued or guaranteed by such person, firm or

corporation to exceed 10 percent of the value of the mutual trust investment company as determined by the board of directors, provided that this limitation shall not apply to investments in obligations of the United States or obligations for which the faith of the United States is pledged for the payment of the principal and interest.

(c) No investment by the mutual trust investment company shall be made in the shares of stock of any one corporation which would cause the total number of such shares held by the mutual trust investment company to exceed five percent of the number of such shares outstanding.

§ 50.41 **Investments in mutual trust investment company**

(a) No funds of any estate, trust or fund shall be invested in a mutual trust investment company if such investment would result in such estate, trust or fund having invested therein an aggregate amount in excess of 10 percent of the assets of the mutual trust investment company, provided that such limitation shall not apply to subscriptions made within a period of six months after the first public offering of stock by such company. In applying the limitation contained in this subdivision, if two or more trusts are created by the same settlor or settlors and as much as one half of the income or principal or both of each trust is, at the time such investment is to be made, payable to, or applicable to the use of, the same person or persons, such trusts shall be considered as one. For the purposes of this section, income or principal shall, at any given time, be deemed payable to, or applicable to the use of, a person or persons if, under the terms of the will or other trust instrument:

(1) the same is then so payable or applicable; or

(2) such person has, or such persons have, a then exercisable power to cause the same to become payable to, or applicable to the use of, himself or themselves. In determining, for the purposes of this section, whether a power is exercisable at a particular time, no account shall be taken of any period for the giving of notice, or for the completion of any other formality, before such power can be exercised or the exercise thereof can become effective. In determining whether the value of the interest of an estate, trust or fund is more than 10 percent of the value of the assets of the mutual trust investment company, the computation shall be made with respect to the mutual trust investment company as increased by the amount of the proposed investment.

(b) The mutual trust investment company shall be permitted to rely on the written statement of any bank or trust company purchasing the stock, that the purchase complies with the foregoing limitations.

§ 50.42 **True fiduciary purposes**

(a) The operation of the mutual trust investment company for other than true fiduciary purposes is hereby prohibited. The mutual trust investment company shall not permit any funds of any trust to be invested if it has reason to believe that such trust was not created or is

not being used for true fiduciary purposes.

(b) Shares of stock of a mutual trust investment company shall not be sold, transferable to or owned by any person other than a trust company or a bank having trust powers organized under the laws of the State of New York, or a national bank having trust powers and having its principal office in the State of New York, acting in a fiduciary capacity, or nominees of such corporate fiduciaries or of individual cofiduciaries and serving with such trust companies or banks, except that shares may be owned, to the extent required by law, by the incorporators of such mutual investment company.

LIQUIDATING ACCOUNT

§ 50.50 **Transfer of investment to liquidating account**

The mutual trust investment company shall cause to be transferred to a liquidating account each investment held by it which has ceased to be eligible and which remains ineligible at a valuation date as a new investment before issuance or redemption of shares of the mutual trust investment company. The mutual trust investment company in its discretion may cause to be so transferred any other investment which it deems advisable to distribute in kind or to liquidate for the benefit of the participants entitled thereto.

§ 50.51 **Schedule of interests in liquidating account**

At the time of the creation of each liquidating account, the mutual trust investment company shall cause to be prepared a schedule showing the interest of every stockholder therein. When the assets of such liquidating account shall have been completely distributed, such schedule shall be thereafter held as part of the permanent records of the mutual trust investment company.

§ 50.52 **Effect of transfer of investment to liquidating account**

For the purpose of subsequent investments in and redemptions of shares of the mutual trust investment company, the value of any investment transferred to a liquidating account shall be excluded.

TERMINATION

§ 50.60 **Action of board of directors**

The board of directors of the mutual trust investment company, in its discretion, may direct by resolution the termination of the corporation. A copy of such resolution, certified by the secretary of the mutual trust investment company, shall be transmitted to the [superintendent] Superintendent within two bank business days after its adoption.

§ 50.61 **Direction of [Banking Board]** Superintendent

The superintendent may direct the termination of any mutual trust investment company.

§ 50.62 **Effect of termination**

After the adoption of a resolution by the board of directors or the receipt of notice from the superintendent directing the termination of any mutual trust investment company, all shares shall be redeemed in the same manner as if it were a liquidating account.

MISCELANEOUS

§ 50.70 **Mutual trust investment company to be audited annually**

A mutual trust investment company shall, at least once during each 12-month period, cause an audit to be made by auditors responsible only to its board of directors. The report of such audit shall include a list of the investments owned by the mutual trust investment company at the time of the audit, which shall show the valuation placed on each item on such list by the mutual trust investment company as of the date of the audit, a statement of purchases, sales and any other investment changes and of income and disbursements since the last audit, and appropriate comments as to any investments in default as to payment of principal or interest.

§ 50.71 **Inspection of records by persons interested**

All accounting records, registers of participations, valuation schedules, periodic statements, audits under the plan and liquidating account records pertaining to the mutual trust investment company shall be subject to inspection, during banking business hours on the three business days commencing with the 11th business day next succeeding any valuation date, by any record holder of stock or by any corporate or individual co-fiduciary for which the record holder is nominee.

§ 50.72 **Effect of mistakes**

No mistakes made in good faith and despite the exercise of due care shall be deemed to be a violation of this Part if after the discovery of the mistake the mutual trust investment company takes promptly whatever action may be practicable in the circumstances to remedy the mistake.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATION'S, PART 51
PLEDGE OF ASSETS BY FOREIGN BANKING CORPORATIONS IN NEW YORK
Statutory authority: Banking Law, § 202-b(1)

Sec.
51.1 Definitions
51.2 General provisions and requirements of deposit agreements
51.3 Requirements applicable to foreign branches and foreign agencies
51.4 Miscellaneous provisions

§ 51.1 Definitions

For the purposes of this Part:

(a) the term *foreign branch* means a branch of a foreign banking corporation licensed pursuant to article II of the Banking Law;

(b) the term *foreign agency* means an agency of a foreign banking corporation licensed pursuant to article II of the Banking Law;

(c) the term *depository* means a bank or trust company or private banker or national bank in the State of New York or the Federal Reserve Bank of New York;

(d) the term *deposit agreement* means an agreement executed between a foreign branch or foreign agency and one or more depositories and approved by the superintendent;

(e) the term [*department]* Department means the New York State Department of Financial Services; and

(f) the term [*superintendent]* *Superintendent* means the Superintendent of the State of New York.

§ 51.2 General provisions and requirements of deposit agreements

No deposit by a foreign branch or foreign agency with a depository pursuant to section 202-b(1) of the Banking Law shall be made until the foreign branch or foreign agency and the depository shall have executed a deposit agreement satisfactory to the [superintendent] Superintendent. The deposit agreement, in addition to any other terms and considerations not inconsistent herewith, shall contain the following provisions:

(a) *Securities and funds to be held as special deposit.* Securities and funds deposited by a foreign branch or foreign agency with a depository under the deposit agreement shall be held by the

depository as a special deposit free of any lien, charge, right of set-off, credit or preference in connection with any claim of the depository against the foreign branch or foreign agency. The depository shall not accept, as a deposit by the foreign branch or foreign agency pursuant to the deposit agreement, any asset that is not accompanied by documentation necessary to facilitate transfer of title.

(b) *Depository to furnish receipt*. The depository shall furnish to the foreign branch or foreign agency, upon the deposit of any securities or funds pursuant to the deposit agreement, a receipt or statement evidencing such deposit. Such receipt or statement shall identify the deposit as having been made by the foreign branch or foreign agency pursuant to section 202-b(1) of the Banking Law and under the deposit agreement, andit shall provide the amount of the deposit and, with respect to deposits of securities, a description of each security so deposited.

(c) *Release of securities by depository*. The depository shall release deposited securities, in connection with their substitution or otherwise, or funds to the foreign branch or foreign agency upon written request:

(1) when accompanied by a certificate, as described in subdivision (e) of this section, signed by a duly authorized officer of the foreign branch or foreign agency; or

(2) upon receipt of a written order of the [superintendent] Superintendent, to release to the foreign branch or foreign agency such part of the securities or funds on deposit under such conditions and terms as the order may specify.

(d) *Termination of right to substitute or withdraw securities or funds*. The right to substitute or withdraw securities or funds provided in this section may be terminated or suspended by the [superintendent] Superintendent at any time.

(e) *Model certificate*. The following or similar certificate shall be executed by a duly authorized officer of the foreign branch or foreign agency where withdrawals are made pursuant to paragraph (c)(1) of this section:

It is hereby certified that the aggregate of securities and/or funds remaining on deposit pursuant to the Deposit Agreement after this withdrawal or substitution amounts to $ _____, valued at the lower of principal amount or market, and that such amount is at least equal to the amount required to be deposited pursuant to section 202-b(1) of the Banking Law and Superintendent's Regulations, Part 322, section 322.1. The amount required to be maintained on deposit, as calculated pursuant to section 322.1 of the Superintendent's Regulations, is $ _____ as of this date.

(f) *Depository to furnish monthly statement of all transactions.* The depository shall furnish to the foreign branch or foreign agency, at least once in each calendar month, a statement of all transactions in the special deposit account since the closing date of the previous such statement. The statement shall include a listing of the securities on deposit and/or the amount of funds on deposit as of the closing date of the statement. A copy of such statement shall be

simultaneously forwarded by the depository to the [superintendent] Superintendent.

(g) *Depository may pay interest earned upon securities.* The depository may pay to the foreign branch or foreign agency interest earned on securities or funds deposited in accordance with such arrangements as may be made between the depository and the foreign branch or foreign agency. The [superintendent] Superintendent is authorized to issue an order revoking this provision.

(h) *Responsibility of depository with respect to deposited securities*. Except as provided below, a depository shall hold the securities deposited by a foreign branch or foreign agency under the deposit agreement separate and apart from all other securities and shall permit examination and comparison thereof by duly authorized representatives of the foreign branch or foreign agency or of the [superintendent] Superintendent. A depository may utilize a central depository, clearing corporation or book entry system to hold securities deposited pursuant to a deposit agreement, provided that the records of the central depository, clearing corporation or book entry system show that the securities are held for the depository as principal or as agent or as custodian of its customers. The depository shall maintain adequate records to demonstrate the disposition of such book entry deposits.

(i) *Depository shall safeguard securities*. The depository shall give to the safekeeping, handling and shipping of securities deposited with it by the foreign branch or foreign agency the same degree of care given by such depository to its own securities.

(j) *Superintendent shall not pay for services rendered*. The [superintendent] Superintendent shall not be required to pay for any of the services rendered or any expenses incurred by the depository or the foreign branch or foreign agency under or in connection with this Part or the deposit agreement.

(k) *Termination of deposit agreement.* The foreign branch or foreign agency or the depository may terminate the deposit agreement by giving the other party thereto at least 60 days written notice of such termination, or such shorter notice as the [superintendent] Superintendent may approve, provided that no termination by the foreign branch, or foreign agency or the depository shall be effective until:

(1) another depository has been designated by the foreign branch or foreign agency;

(2) such other depository has been approved by the [superintendent] Superintendent;

(3) a deposit agreement has been executed in conformity with the provisions of this Part; and

(4) the depository has released to the foreign branch or foreign agency all the securities or funds on deposit in accordance with written instructions from the foreign branch or foreign agency, approved by order of the [superintendent] Superintendent.

(l) *Termination of deposit agreement by action of [superintendent*] Superintendent. If the conditions provided in paragraphs (k) (1)-(4) of this section are not met within 60 days after notice of termination, or such shorter period as the [superintendent] Superintendent may by

order approve, the [superintendent] Superintendent may order the depository to release the securities and/or funds on such terms as may be specified in such order, and in such case the superintendent shall furnish a copy of such order to the foreign branch or foreign agency. The depository shall in such case release the securities and funds upon the terms so specified, and the deposit agreement shall terminate upon such release.

§ 51.3 Requirements applicable to foreign branches and foreign agencies

(a) *Retention of receipts or statements.* Each foreign branch and foreign agency shall retain until completion of its next examination the originals of all receipts or statements obtained from a depository pursuant to section 51.2(b) of this Part. Copies of withdrawal requests and the certificate provided for in section 51.2(c)(1) of this Part shall be retained by the foreign branch or foreign agency for the same period of time.
(b) *Withdrawal request and certificate*. Coincident with any withdrawal request, the foreign branch or foreign agency shall furnish to the superintendent a copy of the withdrawal request and the certificate provided for in section 51.2(c)(1) of this Part.

(c) *Data supported by daily record.* The amount of securities and/or funds remaining on deposit and the amount of "liabilities requiring cover" as certified pursuant to section 51.2(c)(1) of this Part shall be supported by data contained in the daily record required to be maintained pursuant to section 322.5 of this Title.

§ 51.4 Miscellaneous provisions

(a) *Reliance on written communication of department*. For the purposes of the deposit agreement, the foreign branch, the foreign agency and the depository shall accept and rely upon, as an order of the [superintendent] Superintendent, any written communication with the seal of the department affixed thereto, and signed:

(1) by the [superintendent] Superintendent;

(2) by a [deputy superintendent] Deputy Superintendent ; or

(3) by any two employees jointly of the department whom the [superintendent] Superintendent may designate, to the depository, the foreign branch or the foreign agency (whichever is the addressee of such communication).

(b) *Release from compliance with terms or conditions of deposit agreement.* The superintendent may by order relieve the foreign branch, the foreign agency or the depository from compliance with any term or condition of the deposit agreement, including any term or condition prescribed by this Part, if the [superintendent] Superintendent shall find such action necessary or proper to give effect to the purposes of section 202-b(1) of the Banking Law or of this Part.

(c) *Written communication to the [superintendent] Superintendent*. Written communication to the superintendent regarding this Part should be addressed to the Department of Financial Services at the address set forth in section 1.1 of Supervisory Policy G 1; Attention: Foreign and Wholesale Banks Division.

TITLE 3. BANKING DIVISION
Chapter1. SUPERINTEDNT'S REGULATIONS
PART 52
MAINTENANCE OF ASSETS BY LICENSED FOREIGN BANKS IN NEW YORK

Statutory authority: Banking Law, § 202-b(2)

Sec.
52.1 Maintenance of assets
52.2 Statement of policy

§ 52.1 Maintenance of assets

The amount of eligible assets (as such term is defined in superintendent's regulations section 322.3), which is to be held by a foreign banking corporation licensed pursuant to article II of the Banking Law to maintain one or more branches or agencies in this State, is established at zero percentum of its liabilities appearing in the books, accounts and records of its agency, agencies, branch or branches in this State as liabilities of such agency, agencies, branch or branches, provided that the [superintendent] Superintendent may impose specific asset maintenance requirements in cases where he deems it necessary for the protection of the public interest and the interest of depositors and creditors, and provided further that the superintendent in specific cases may impose such other requirements as he deems necessary in order to effectuate the purpose of the provisions of Banking Law section 202-b.

§ 52.2 Statement of policy

Whether or not the foreign banking corporation is required to maintain eligible assets pursuant to the provisions of this Part, it is hereby declared to be the policy of the [superintendent] Superintendent that the foreign banking corporation shall maintain at the branch or agency the evidence of indebtedness, or other documentation, for any asset which appears in the books, accounts and records of that branch or agency as an asset of such branch or agency.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 59
DESIGNATION OF RATING SERVICES

Statutory authority: Retirement and Social Security Law, § 177-c; Banking Law, § 14(1)(s)

Sec.
59.1 Mortgage pass-through certificates

§ 59.1 Mortgage pass-through certificates

For the purposes of Retirement and Social Security Law, section 177-c, the [Banking Board] Superintendent hereby designates Moody's Investors Services, Inc., Standard & Poor's Corporation and Fitch Investors, Service, Inc.

TITLE 3. BANKING DIVISON
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 60
ADDITIONS TO LEGAL LIST

Statutory authority: Banking Law, §§ 14(1)(f), 235(19), 379(5)

Sec.

60.1 Corporate interest-bearing obligations made eligible for savings banks investment

§ 60.1 Corporate interest-bearing obligations made eligible for savings banks investment

Purpose. This Part memorializes those securities which have been approved from time to time by the [Banking board] Superintendent for investment by savings banks and savings and loan associations, under the authority contained in Banking Law, Section 235.19 and which have not mature as of January 1, 1996.

THE NEW YORK CITY COMMUNITY PRESERVATION CORPORATION

Collateral trust notes issued pursuant to and having terms substantially similar to those set forth in an indenture that shall have received the prior specific approval of the superintendent, provided that no savings bank may invest in such collateral trust notes to a greater extent than five percent of net worth as of June 30, 1977 or such other date as may be established by the Superintendent [of Banks]

AMERICAN CAN COMPANY:
Deb. 6's, 1997
AMERICAN EXPRESS CREDIT:
Sr. Notes 7 7/8's, 1996
Sr. Notes 8 3/4's, 1997
AMOCO CO.:
Deb. 7 7/8's, 1996
Deb. 6's, 1998
ARKLA INC.
1st 8's, 1997
ASSOCIATES CORP. NORTH AMERICA:
Sr. Notes 8 1/4's, 1996
Sr. Notes 8 3/8's, 1998
ATLANTIC RICHFIELD CO.:
Deb. 9 1/2's, 1996
Deb. 5 5/8's, 1997
BOEING CO.:
Notes 8 3/8's, 1996
BORDEN COMPANY:
Deb. 3 3/4's, 1997

B P AMERICA INC.:
Gtd. Notes, 9 3/8's, 1997
Gtd. Notes, 9 1/2's, 1998
CAPITAL CITIES/ABC FIN. CO.:
Notes, 8 1/4's, 1996
CHEVRON CORP.;
s.f.Deb. 8 3/4's, 1996
s.f.Deb. 7's, 1996
CIGNA CORP.:
Notes, 8's, 1996
COCA COLA ENTERPRISES INC.:
Notes, 7 7/8's, 1997
COMMONWEALTH EDISON COMPANY:
s.f. Deb. 2 7/8's, due 04/01/2001
s.f. Deb. 3 1/8's, due 10/01/2004
s.f. Deb. 3 7/8's, due 01/01/2008
s.f. Deb. 4 5/8's, due 01/01/2009
s.f. Deb. 4 3/4's, due 12/01/2011
DAYTON HUDSON CORP.:
Notes, 8 3/8's, 1996
DELMARVA POWER & LIGHT COMPANY:
1st & Coll.Trust, 6 3/8's, 1997
DUQUESNE LIGHT COMPANY:
s.f.Deb. 5's, 2010
EASTMAN KODAK COMPANY:
Deb. 8.55's, 1997
Deb. 9 1/4's, 1998
Deb. 9 3/8's, 2003
EXXON CORP.:
Deb. 6 1/2's, 1998
FARMERS GROUP INC.:
1st 8 1/4's, 1996
FORD MOTOR CO.:
Nts. 8 1/2's, 1996
FORD MOTOR CREDIT:
Nts. 7.50-11 7/8's, to 1997
GENERAL MOTORS:
Notes 8 1/4's, 2016
GENERAL MOTORS ACCEPTANCE CORPORATION:
Notes 14 3/8-7 1/4's, to 1998
HOECHST CELANESE CORP.:
Notes 9.45's, 1997
INDIANA & MICHIGAN ELECTRIC COMPANY:
s.f. Deb. 7 1/4's, 1998

JOHNSON CONTROLS INC.:
Notes 8 7/8's, 1998
K MART:
Deb. 8 1/8's, 1997
LOCKHEED CORPORATION:
Notes 8 1/2's, 1996
MARRIOTT CORP.:
Sr. Notes 8 1/8's, 1996
Sr. Notes 9 7/8's, 1997
MASCO CORP.:
Notes 8 3/4's, 1996
MCDONNELL DOUGLAS CORP.:
Notes 7 7/8's, 1997
MONSANTO:
Notes 9 3/8's, 1996
OHIO POWER COMPANY:
s.f. Deb. 5 1/8's, 1996
s.f. Deb. 6 5/8's, 1997
PENNEY (J.C.) CO., INC.:
Notes 8 3/4's, 1996
Notes 9 3/8's, 1998
PEPSICO INC.:
Notes 7 5/8's, 1998
RJR NABISCO, INC.:
Notes 8 7/8's, 1998
ROCKWELL INTERNATIONAL:
Notes 7 1/2's, 1997
SHELL OIL COMPANY:
Notes 8 3/8's, 1996
STANDARD OIL COMPANY OF NEW JERSEY: (EXXON)
Deb. 6's, 1997
Deb. 6 1/2's, 1998
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS:
Ref. & Imp. 4's 2019, SER. C
TRAVELERS CORP.:
Notes 7 5/8's 1997
TRW INC.:
Notes 8 1/4's, 1996
UNION OIL COMPANY OF CALIFORNIA:
Deb. 6 5/8's, 1998
UNION PACIFIC CORP.:
Notes 8 7/8's, 1998
UPJOHN COMPANY:
Notes 8's, 1996

WESTINGHOUSE ELECTRIC CORPORATION:

Notes	7 3/4's,	1996

WEYERHAUSER COMPANY:

Notes	9 3/8's,	1998

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDT'S REGULATIONS
PART 61
DESIGNATIONS UNDER BANKING LAW, SECTION 235
(Statutory authority: Banking Law, § 235[12-a] [21-a])

Sec.
61.1 Commercial paper
61.2 Interest-bearing obligations

§ 61.1 Commercial paper

For the purposes of Banking Law section 235(12-a) (a), the [Banking Board] Superintendent hereby designates Moody's Investors Service, Standard & Poor's Corporation, Fitch Investors Service, Inc. and Duff and Phelps, Inc.

§ 61.2 Interest-bearing obligations

For the purposes of Banking Law section 235 (21-a), the [Banking Board] Superintendent hereby designates Moody's Investors Service, Standard & Poor's Corporation, Fitch Investors Service, Inc. and Duff and Phelps, Inc.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDT'S REGULATIONS

PART 62
INVESTMENTS IN HOUSING AND URBAN DEVELOPMENT PROJECTS
(Statutory authority: Banking Law, § 235[18] and [21] [a][1])

Sec.
62.1 Cooperative Apartment housing projects of redevelopment companies
62.2 Rental housing projects
62.3 Investments by service agencies in urban development projects

§ 62.1 Cooperative apartment housing projects of redevelopment companies

Except as the [Banking Board] Superintendent shall otherwise provide, savings banks may sponsor and finance cooperative apartment housing projects undertaken by redevelopment companies organized pursuant to Private Housing Finance Law, section 103, to the extent and on the conditions hereinafter prescribed:

(a) *Sponsorship of a cooperative apartment housing redevelopment project*. One or more savings banks may sponsor a cooperative apartment housing redevelopment project for the purpose of rehabilitating an area which shall be found to be substandard and insanitary. The area to be rehabilitated shall be located in a municipality and, if such savings bank is the only sponsor, in a county in which an office of the sponsoring savings bank is located. If there is more than one sponsoring savings bank, such municipality shall be located in the banking district in which the sponsoring savings banks owning 50 percent or more of the stock and obligation of the redevelopment company have their principal offices. The term "municipality" as used in this section shall be deemed to refer to a city, town or incorporated village. The project to be undertaken by such company may be undertaken independently or in conjunction with or as a portion of a slum clearance project under title I of an act of congress entitled "Housing Act of 1949", as amended, or under any State or municipally-sponsored slum clearance program.

(b) *Agreement to be filed with [superintendent] Superintendent*. No investment shall be made by any savings bank in the stock and obligations of a redevelopment company unless such company shall have filed with the [superintendent] Superintendent its written agreement subjecting itself to the supervision of the Department, submitting to periodic examinations by the Department at such times and in such manner as the [superintendent] Superintendent shall provide and agreeing to pay the charges for such examinations assessed against it by the [superintendent] Superintendent in the same manner as if it were a banking organization organized under the laws of New York. The agreement respecting supervision shall terminate when the stock and junior obligations of the redevelopment company have been disposed of

and the investment by the savings bank or banks in the redevelopment company consists solely of obligations secured by a first mortgage on the property of the redevelopment company.

(c) *Authorization to subscribe to shares of redevelopment company*. A savings bank or banks sponsoring a redevelopment cooperative apartment housing project are hereby authorized to subscribe to the shares of such redevelopment company for a total purchase price not exceeding $ 10,000, and to advance to such company the funds required for the development of the plan of the project undertaken by such company upon issuance to the bank or banks by the company of income debenture certificates in such aggregate principal amount equal to the aggregate funds from time to time advanced by the bank or banks for planning purposes. In no event shall the aggregate amount of such advances for planning funds exceed the greater of

(1) $ 100,000 or

(2) 1 percent of the estimated cost of the project. The aggregate of such advances to such company shall not exceed $ 400,000 without the prior written approval of the [superintendent] Superintendent.

(d) *Aggregate investment in mortgage loans to redevelopment companies*. The aggregate investment made by any savings bank in mortgage loans to redevelopment companies shall be subject to the limitations contained in Banking Law, section 235(28). The aggregate investment by any savings bank in the stock and obligations (other than obligations evidencing a mortgage loan) of redevelopment companies shall be subject to the limitations contained in Banking Law, section 235(21)(b).

(e) *Aggregate investment in stocks and obligations of any redevelopment company*. The aggregate investment by any savings bank in the stock and obligations (including obligations evidencing mortgage loans) of any redevelopment company shall not exceed the lesser of 3 percent of its assets or 16 2/3 percent of its net worth.

(f) *Authorization to loan to company undertaking project.* A savings bank sponsoring a redevelopment cooperative apartment housing project is authorized to loan to the company undertaking such project the amount required by the redevelopment company for the acquisition of title to the area and such loan, together with the aggregate principal amount of the income debenture certificates representing the advance planning funds of the company, shall be secured by a first mortgage upon the entire area of the redevelopment project. Upon the execution and delivery of such first mortgage, the income debenture certificates shall be cancelled by the bank and delivered to the company.

(g) *Authorization to enter into a building loan contract with a redevelopment company*. A savings bank sponsoring a redevelopment cooperative apartment housing project is authorized to enter into a building loan contract with a redevelopment company and to invest its funds in the first lien bonds of such company issued under a trust indenture and pursuant to the building loan contract or a building loan bond and mortgage under which advances are made pursuant to the building loan contract. Such construction loan shall have a maturity not exceeding two years, provided that the investment by such savings bank in mortgage loans

(1) to all redevelopment companies shall not, in the aggregate, exceed the lesser of 10 percent of its assets or 50 percent of its net worth and

(2) to any redevelopment company shall not, in the aggregate, exceed the lesser of 3 percent of its assets or 16 2/3 percent of its net worth.

(h) *Cost of redevelopment cooperative apartment housing project to be certified*. The estimated cost of a redevelopment cooperative apartment housing project prior to its completion shall be certified as to its reasonableness and correctness by an independent engineering organization and shall include for the purpose of arriving at the estimated cost, the cost to the company of the lands owned by the company, the cost of demolition, the cost of constructing the improvements, including planning, designing, engineering and landscaping, the cost of relocating tenants, the cost of interest and other carrying charges during the period of acquisition and of construction, all other costs necessarily incurred and properly attributable to undertaking, constructing and completing the project, and an allowance for working capital which shall not exceed an amount equal to 3 percent of the estimated cost.

(i) *Acquisition of interest in real property by redevelopment company limited*. No redevelopment company owning, constructing or planning a cooperative apartment housing redevelopment project and sponsored by one or more savings banks shall acquire any interest in any real property other than a title in fee, nor shall it acquire any real property unless at the time of acquisition it shall obtain an opinion of qualified counsel or a policy of title insurance of a title company authorized to insure titles on real estate in the State of New York certifying that good and marketable title in fee is vested in the redevelopment company, provided that a redevelopment company may acquire an interest in real property, other than a title in fee, upon the prior written approval of the [superintendent] Superintendent.

(j) *Limitations on ownership and acquisition of stock or junior obligations*. A savings bank participating in the financing of a redevelopment company undertaking a cooperative apartment housing redevelopment project shall not at any time own or acquire any greater proportionate interest in the stock or junior obligations of such redevelopment company than its proportionate interest in the senior obligations of such company.

(k) *Valuation on books of savings bank*. Any investment by a savings bank in the stock and obligations of a redevelopment company owning, constructing, or planning a cooperative apartment housing redevelopment project shall be entered on its books at the actual cost thereof and shall not thereafter be carried on its books at a value exceeding such cost as reduced by the proportionate share of the depreciation taken by such redevelopment company on the buildings and improvements owned by it which the investment of the savings bank bears to the total investment in such redevelopment company.

§ 62.2 Rental housing projects

(a) *Definitions*. As used in this section,

(1) the term *housing project* means a multi-family rental, co-operative or condominium housing project which

(i) is financed, at least in part, under municipal, State or Federal programs providing grants, tax incentives or other forms of financial assistance other than mortgage loans insured or guaranteed by the Federal government, or

(ii) is financed, at least in part, by conventional mortgage loans or mortgage loans insured or guaranteed by the Federal government, is designed to provide a minimum of 35 dwelling units, and is designed to provide dwelling space at a maximum monthly charge per room of $ 70; and

(2) the term *monthly charge* per room means (i) in the case of a rental housing project, the initial average monthly rental per room, or (ii) in the case of a co-operative or condominium housing project, the initial average monthly carrying charge per room plus the average of the amounts determined by allocating one-half of one percent of the original equity investment in the housing project by each co-operator or unit owner among the rooms occupied or to be occupied by him; and

(3) the term *housing corporation* means a corporation formed for the purpose of acquiring, constructing, owning, maintaining, operating, selling or conveying a single housing project and which shall have filed with the [superintendent] Superintendent a written agreement subjecting itself to the supervision of the Department, agreeing to make periodic reports, submitting to periodic examinations by the Department at such times and in such manner as the [superintendent] Superintendent shall require and agreeing to pay the charges for such examinations assessed against it by the [superintendent] Superintendent in the same manner as if it were a banking organization organized under the laws of this State.

(b) *Investments in housing corporations*. Except as the [superintendent] Superintendent shall otherwise provide, a savings bank, individually or in participation with one or more savings banks, may invest in the stock or obligations of any housing corporation, provided that the making of such investment shall not cause

(1) the aggregate amount invested by the savings bank in the stock and obligations of one such housing corporation to exceed the lesser of 1 percent of its assets or 10 percent of its net worth or

(2) the aggregate amount so invested in all such housing corporations to exceed the lesser of 5 percent of its assets or 50 percent of its net worth.

(c) *Transfers of investments*. No savings bank shall transfer or sell any stock of a housing corporation to any person or to any corporation other than a savings bank or to a corporation all of the capital stock of which is owned by not less than 20 savings banks or transfer or sell any obligation of a housing corporation to any person or to any corporation other than a savings bank, except as the [superintendent] Superintendent shall approve in writing, unless

(1) all of the stock and obligations of such housing corporation held by savings banks shall simultaneously be sold or

(2) only obligations of such housing corporation continue to be held by savings banks and such obligations constitute

(i) a 100 percent interest in a first mortgage qualifying as an eligible investment under the provisions of Banking Law, section 235(6), or

(ii) a security duly authorized as an investment for savings banks other that under the provisions of Banking Law, section 235(21).

(d) *Valuation on books of savings banks*. Any investment by a savings bank in the stock and obligations of a housing corporation shall be entered on its books at the actual cost thereof and shall not thereafter be carried on its books at a valuation exceeding such cost as reduced by the greater of

(1) the proportionate share of the depreciation taken by such housing corporation on the buildings and improvements owned by it which the investment of the savings bank bears to the total investment in such housing corporation or

(2) amortization, commencing with the beginning of the second year after completion of the housing project undertaken by such housing corporation, at the rate of not less than two percent per annum of such cost.

§ 62.3 Investments by service agencies in urban development projects

A corporation organized under the laws of this State, all of the stock of which is owned by not less than 20 savings banks or all of the stock of which is owned by not less than 20 savings and loan associations or Federal savings and loan associations in New York State (hereinafter referred to as a "service agency"), may invest directly, or through any one or more wholly-owned subsidiary corporations, in the stock of certain corporations and in certain other entities to the following extent:

(a) stock of any other corporation eligible for investment by savings banks under Banking Law, section 235(21)(a)(1) and (1-a);

(b) stock of any other corporation whose bonds, notes or other evidences of indebtedness are eligible for investment by savings banks under Banking Law, section 235(28), the New York State Urban Development Corporation Act, section 23, or the New York State Urban Development and Research Corporation Act, section 18;

(c) stock of any other corporation whose bonds, notes or other evidences of indebtedness are eligible for investment by savings banks under Banking Law, section 235, and which is organized and operated to acquire, construct, reconstruct, rehabilitate, improve, alter or repair or provide for the construction, reconstruction, improvement, alteration or repair of, or sell, lease or otherwise dispose of any "residential", "industrial", "land use improvement" or "civic project" or any combination thereof (as such terms are defined in the New York State Urban Development Corporation Act) located in this State which are financed, at least in part, under municipal, State or Federal programs providing grants, tax incentives or other forms of financial assistance, provided that

(1) the investment in such stock shall not exceed that which a single savings bank would be

permitted to make under Banking Law, section 235, or, if a savings bank would not be so permitted to invest in such stock, then

(2) the investment in the stock of any such corporation shall not exceed the lesser of one-tenth of one percent of the assets or one percent of the capital, surplus, undivided profits and reserves of the service agency making such investment and the investment in the stock of all such corporations shall not exceed the lesser of one percent of the assets or 10 percent of the capital, surplus, undivided profits and reserves of such service agency; and

(d) a redevelopment company organized as a partnership or trust as provided by Private Housing Finance Law, section 103(2) and (3), for the purpose of constructing, rehabilitating and operating housing projects and related facilities intended primarily for use by persons of low and moderate income, provided:

(1) the mortgage financing for such project or facility is provided by one or more savings banks directly or through a service agency or its wholly-owned subsidiary,

(2) any such projects or related facilities are financed, at least in part, under municipal, State or federal programs providing grants, tax incentives or other forms of financial assistance, or under the provisions of section 221(d)(3) or section 236 of the National Housing Act, as amended, or any other provisions of the National Housing Act in effect from time to time permitting federal insurance of mortgages up to 90 percent of the project value,

(3) the investment in any such entity shall not exceed 10 percent of the total cost of the project for which the entity was formed and

(4) the investment in all such entities shall not exceed the lesser of 5 percent of the assets or 50 percent of the capital, surplus, undivided profits and reserves of the service agency making such investments.

TITLE 3. BANKING DIVISION

CHAPTER 1. SUPERINTENDENT'S REGULATIONS

PART 63

INVESTMENTS IN SAVINGS BANKS TRUST COMPANY AND OTHER SAVINGS BANKS SERVICE AGENCIES

(Statutory authority: Banking Law, §§ 234[14], 235[18])

Sec.
63.1 Investments in securities of trust company or other corporation wholly owned owned by savings banks
63.2 Investments in savings banks trust company
63.3 Investments in the capital stock of a service agency
63.4 Investments in the capital notes of debentures of a service agency
63.5 Investments by savings banks life insurance departments
63.6 Investments by savings banks life insurance fund
63.7 Revocation, rescission or modification

§ 63.1 Investments in securities of trust company or other corporation wholly owned by savings banks

Savings banks may invest in the capital stock, capital notes and debentures of any trust company and of any other corporation organized under the laws of this State, provided all the stock of such trust company or corporation is owned by not less than 20 savings banks and subject to the further conditions set forth in sections 63.2, 63.3 and 63.4 of this Part. For the purposes of this Part, such a trust company is referred to as a "savings banks trust company" and such a corporation is referred to as a "service agency".

§ 63.2 Investments in savings banks trust company

No savings bank shall invest in the capital stock, capital notes and debentures of a savings banks trust company if the aggregate amount of its investments in such securities, including the proposed investment, would exceed two and one-half percent of the total assets of such savings bank as of the date of such investment.

§ 63.3 Investments in the capital stock of a service agency

No savings bank shall invest in the capital stock of a service agency if the aggregate amount of its investments in such stock, including the proposed investment, would exceed three-tenths of one percent of the total assets of such savings bank as of the date of such investment.

§ 63.4 Investments in the capital notes or debentures of a service agency

(a) No savings bank shall invest in the capital notes or debentures of a service agency if the

aggregate amount of its investment in such notes and debentures, including the proposed investment, would exceed the greater of two percent of the total assets of such savings bank as of the date of such investment or $ 20,000.

(b) Nor shall any savings bank invest in such capital notes or debentures unless:

(1) such service agency shall have filed with the [superintendent] Superintendent its written agreement (and shall have complied with the terms thereof) subjecting itself to the supervision of the Department submitting itself to periodic examinations by the Department at such times and in such manner as the [superintendent] Superintendent shall provide, and agreeing to pay the charges of such examinations assessed against it by the [superintendent] Superintendent in the same manner as if it were a banking organization organized under the laws of New York; and

(2) such service agency restricts the investment of its funds to:

(i) investments which savings banks may make under the laws of this State excluding, except as permitted by subparagraph (ii) of this paragraph, those investments permitted solely by virtue of Banking Law, section 235(21);

(ii) investments in the stock of certain corporations and in certain other entities, either directly or through investment in the securities of any one or more wholly owned subsidiary corporations, which a service agency may make under section 62.3 of Part 62 (relating to housing and urban development projects), subject to the limitations thereof;

(iii) bonds and mortgages and notes and mortgages or part interest therein, on improved and unencumbered real property, including leasehold estates, located in any other state of the United States, the District of Columbia or the Commonwealth of Puerto Rico, which would qualify as investments for savings banks under the laws of this State except for restrictions governing the location of the property or the location of the principal office of the holder of any part interest;

(iv) investments in plots and buildings and related facilities to be used by a savings bank of New York State as a branch office, as may be or have been from time to time approved by the [superintendent] Superintendent, either directly or through the stock and obligations of one or more wholly owned subsidiary corporations; and

(v) such other investments as the [superintendent] Superintendent shall approve in writing.

§ 63.5 Investments by savings banks life insurance departments

The life insurance department of a savings bank may invest in the capital stock, capital notes and debentures of a savings banks trust company or service agency, provided the aggregate amount of its investments in such stock, notes and debentures, including the proposed investment, would not exceed the greater of two percent of the sum of its policy reserves and policy liabilities or $ 20,000. The term policy reserves and policy liabilities shall have the meaning specified in Banking Law, section 275.

§ 63.6 Investments by savings banks life insurance fund

Savings banks life insurance fund may invest in the capital stock, capital notes and debentures of a savings banks trust company or service agency, provided the aggregate amount of its investments in such stock, notes and debentures, including the proposed investment, would not exceed the greater of two percent of its total assets or $ 20,000.

§ 63.7 Transfer of property to a savings banks trust company

A savings bank may, pursuant to Banking Law, section 234(14), transfer to a savings banks trust company, as trustee or agent upon such terms as may be agreed upon, for the purpose of liquidation, discharge, readjustment, improvement or rehabilitation, for the account and the expense of such savings bank, any property, security, investment, bond, mortgage, chosein-action, or other security of whatever character and, notwithstanding any provision of law relating to the investment of its funds, take and hold any such savings banks trust company's certificate of deposit therefor, and any resulting income, money, property, security, investment, bond, mortgage, chose-in-action or other security of whatever character arising out of the management, liquidation, readjustment, improvement or rehabilitation thereof.

§ 63.8 Revocation, rescission or modification

Any investment made under this Part may be rendered ineligible for investment at any time by further action of the [superintendent] Superintendent.

TITLE 3. BANKING DIVISION
CHPATER 1. SUPERINTENDENT'S REGULATIONS
PART 65

AGREEMENTS TO LIMIT PERSONAL LIABILITY ON INSURED MORTGAGES

(Statutory authority: Banking Law, § 235[20])

Sec.
65.1 Limitation of personal liability of borrowers under bonds and mortgages insured by Federal Housing Commissioner

§ 65.1 Limitation of personal liability of borrowers under bonds and mortgages insured by Federal Housing Commissioner

A savings bank may agree to limit the personal liability of any individual, or of any trustee, partnership, association, corporation or other organization or legal entity, obligated or to be obligated under any bond, note, mortgage or deed of trust insured by the Federal Housing Commissioner, or for which a commitment to insure has been made by the Federal Housing Commissioner, provided that a savings bank may so agree only if the obligations of the commissioner to the savings bank with respect to such insurance or commitment will not be extinguished, reduced or limited by reason of such agreement.

TITLE 3. BANKING DIVISION
CHPATER 1. SUPERINTENDENT'S REGULATIONS
PART 66

RECIPROCAL INTERSTATE ACQUISITIONS OF SAVINGS AND LOAN ASSOCIATIONS

(Statutory authority: Banking Law, § 413)

Sec.

66.1 Explanation
66.2 Definitions
66.3 Acquisitions

§ 66.1 Explanation

Banking Law, section 413, created by chapter 118 of the Laws of 1987, provides that with the prior approval of the [superintendent] Superintendent, a New York savings and loan holding company or a subsidiary thereof may acquire control of an out-of-state savings and loan holding company or an out-of-state insured institution, and an out-of-state savings and loan holding company or a subsidiary thereof may acquire control of a New York savings and loan holding company or a New York insured institution, subject to regulations to be adopted by the [Banking Board] Superintendent. Section 413 further requires that the terms and conditions prescribed by such regulations be substantially similar to those contained in section 142-b of the Banking Law governing reciprocal interstate acquisitions by bank hold companies.

§ 66.2 Definitions

(a) *insured institution* shall have the same meaning as in title 12 United States Code, section 1730a;

(b) *savings and loan holding company* shall have the same meaning as in title 12 United States Code section 1730a;

(c) *New York insured institution* shall mean an insured institution whose principal office is located in this State, and out-of-state insured institution shall mean an insured institution whose principal office is located in a state other than this State or the District of Columbia; and

(d) *New York savings and loan holding company* shall mean a savings and loan holding company which controls one or more New York insured institutions, and out-of-state savings and loan holding company shall mean a savings and loan holding company other than a New York savings and loan holding company which conducts its principal banking business in a state other than

this State or the District of Columbia. The jurisdiction in which an out-of-state savings and loan holding company conducts its principal banking business is that state or the District of Columbia in which the total deposits of such company and its banking subsidiaries are largest.

§ 66.3 Acquisitions of New York insured institutions

(a) Subject to the provisions of this Part, an out-of-state savings and loan holding company or subsidiary thereof may acquire control, directly or indirectly, of one or more insured institutions; provided, however, that no such acquisition of control shall be lawful without the prior approval of the [superintendent] Superintendent. Any such acquisition of control approved by the [superintendent] Superintendent shall not affect the powers or privileges of such insured institution or insured institutions. Any out-of-state savings and loan holding company or subsidiary thereof desiring to acquire control of one or more insured institutions shall file an application in writing with the [superintendent] Superintendent and pay the fee specified in section 1.2 of Supervisory Policy G 1. The application shall contain such information as the [superintendent] Superintendent may deem necessary or appropriate for the purpose of making a determination under this Part. As used in this Part, the term control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an insured institution, whether through the ownership of voting stock of such insured institution, the ownership of voting stock of any company which possesses such power, or otherwise. Control shall be presumed to exist if any out-of-state savings and loan holding company or subsidiary thereof, directly or indirectly, owns, controls or holds with power to vote five per centum or more of the voting stock of such insured institution, but no person shall be deemed to control an insured institution solely by reason of being an officer or director of such institution or savings and loan holding company or subsidiary. The [superintendent] Superintendent may in his or her discretion, upon the application of an out-of-state savings and loan holding company or subsidiary which, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote, any voting stock of such insured institution, determine whether or not the ownership, control or holding of such voting stock would constitute control of such institution for purposes of this Part. No proposed acquisition of control pursuant to this Part shall be approved unless the [superintendent] Superintendent finds that:

(1) the statute laws of the jurisdiction in which the operations of the out-of-state savings and loan holding company's insured subsidiaries are principally conducted specifically authorize the direct or indirect acquisition of control of one or more insured institutions in such jurisdiction by a savings and loan holding company or subsidiary thereof, the operations of which savings and loan holding company's insured subsidiaries are principally conducted in this State; or

(2) such statute laws authorize the acquisition of control because the out-of-state savings and loan holding company or subsidiary is authorized by Banking Law, section 413 and this Part to acquire control of and hold shares of insured institutions in this state.

(b) The direct or indirect acquisition of control by a savings and loan holding company or subsidiary thereof, under such statute laws, shall not affect the powers or privileges of the insured institution over which control is obtained, nor shall any such acquisition be subject to conditions or restrictions materially limiting the ability of a savings and loan holding company or subsidiary thereof to acquire insured institutions generally in such jurisdiction if such conditions or restrictions would not apply with equal effect to the acquisition of insured institutions in such jurisdiction by an out-of-state savings and loan holding company, or subsidiary thereof, which out-of-state savings and loan holding company or subsidiary conducts its principal banking business in such jurisdiction.

(c) Any out-of-state savings and loan holding company or subsidiary which proposes to acquire control of one or more insured institutions pursuant to the provisions of this article shall provide to the [superintendent] Superintendent a copy of any original application to the applicable Federal regulatory agency for approval of such action, and a copy of any supplemental material or subsequent amendments thereto, at the same time the application, supplemental material or amendment is transmitted to such agency.

(d) An insured institution acquired pursuant to this subdivision may be either a newly organized institution, which at the time of acquisition has not commenced any part of its banking business, or an institution currently conducting banking business in this State.

(e) Any out-of-state savings and loan holding company or subsidiary which acquires control of an insured institution pursuant to the provisions of this Part shall file with the [superintendent] Superintendent copies of all regular and periodic reports which such out-of-state savings and loan holding company is required to file under section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended, excluding any portions not available to the public.

§ 66.4 Acquisitions of out-of-state insured institutions

(a) Except with the prior approval of the [superintendent] Superintendent, no savings and loan holding company or subsidiary thereof shall acquire control of an out-of-state savings and loan holding company or an insured institution, the principal office of which is located in a state other than this State or the District of Columbia if the statute laws of the jurisdiction of the out-of-state savings and loan holding company of insured institution authorize such acquisition because of the provisions of Banking Law, section 413 and this Part.

(b) A savings and loan holding company or subsidiary thereof that seeks such approval shall file a written application with the [superintendent] Superintendent and pay the fee specified in section 1.2 of Supervisory Policy G 1. The application shall contain such information as the [superintendent] Superintendent may deem necessary for the purposes of making a determination under this Part.

(c) The [superintendent] Superintendent shall deny any application submitted for approval

pursuant to section 66.5 of this Part if, after notice to and on opportunity to be heard by the applicant, the [superintendent] Superintendent finds that either:

(1) (i) the applicant or any of its banking subsidiaries located in this State shall have received within the preceding 24 months as assessment pursuant to the requirements of the Federal Community Reinvestment Act of 1977, United States P.L. 95-128, or Banking Law, section 28-b, indicating that such subsidiary does not have an acceptable record of meeting the credit needs of its entire community, including low and moderate income neighborhoods, consistent with the safe and sound operation of such institution; or

(ii) subsequent to the most recent of such assessments as described in subparagraph (i) of this paragraph, an application submitted by the savings and loan holding company or any of its banking subsidiaries to the [superintendent] Superintendent or the appropriate Federal regulatory agency, which application involves an assessment of the savings and loan holding company's or one or more of its banking subsidiaries' performance in meeting the credit needs of its community or communities, shall not have been approved because of an unacceptable record in meeting such credit needs; provided, however, the [superintendent] Superintendent may approve any such proposed acquisition of control if the agency that makes such assessment indicates that it has been corrected or the applicant demonstrates to the satisfaction of the [superintendent] Superintendent that substantial efforts have been made to comply with the requirements of the Federal Community Reinvestment Act of 1977 or Banking Law, section 28-b; or

(2) the applicant fails to provide information or produce documents requested by the [superintendent] Superintendent in relation to an application.

(d) Unless the [superintendent] Superintendent shall have denied such application in writing within 120 days of the receipt thereof, or shall have advised the applicant in writing by certified or registered mail prior to the expiration of 120 days of his or her determination to extend such period an additional 60 days, such application shall be deemed approved.

§ 66.5 Violations

As provided in Banking Law, section 413, violators of this Part shall be subject to the penalties prescribed in Banking Law, section 142-b, specifically:

(a) If a savings and loan holding company or subsidiary thereof acquires control of an out-of-state savings and loan holding company or insured institution in violation of this Part, the

[superintendent] Superintendent, shall have the authority by order to enjoin or restrain such violation, including authority to order the bank holding company or subsidiary to divest any stock acquired in violation of such law. Any savings and loan holding company or subsidiary thereof which is the subject of an order pursuant to this subdivision may at any time within four months of the date of such order apply to the Supreme Court in the judicial district in which its principal office is located for an order setting aside or modifying the order for good cause shown.

(b) A savings and loan holding company or subsidiary, upon order of the [superintendent] Superintendent pursuant to subdivision (a) of this section, shall divest any stock of an insured institution or out-of-state savings and loan holding company that is has acquired in violation of this Part within two years of the date of a divestiture order under subdivision (a) of this section, or within two years after such a divestiture order becomes final and subject to no further judicial review.

TITLE 3. BANKING DIVISION

CHAPTER 1. SUPERTENDENT'S REGULATIONS

PART 67

PAYMENT OF INTEREST ON DAY OF DEPOSIT-DAY OF WITHDRAWAL ACCOUNTS IN SAVINGS BANKS AND STATE-CHARTERED SAVINGS AND LOAN ASSOCIATIONS

(Statutory authority: Banking Law, §§ 245[3-b], 378[4][bb])

Sec.
67.1 Minimum balance

§ 67.1 Minimum balance

Savings banks and savings and loan associations may require that a minimum balance in a day of deposit-day of withdrawal account be maintained until the end of any dividend or interest period in which a withdrawal from such account is made; provided, however, that any savings bank or savings and loan association requiring a minimum deposit shall so indicate clearly on all passbooks issued for such accounts.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 68

INVESTMENTS IN SAVINGS AND LOAN SERVICE AGENCIES

(Statutory authority: Banking Law, § 379-a[1])

Sec.

68.1 Investments in securities of corporations wholly owned by savings and loan associations
68.2 Investments in service agencies
68.3 Investments in capital stock of service agency
68.4 Investments in the capital notes or debentures of a service agency
68.5 Revocation, rescission or modification

§ 68.1 Investments in securities of corporations wholly owned by savings and loan associations

Savings and loan associations may, pursuant to section 379-a(1) of the Banking Law, invest in stock, capital notes and debentures of any corporation organized under the laws of this State, other than a trust company, provided that all of the stock of such corporation is, or is to be, owned by not less than 20 savings and loan associations or Federal savings and loan associations located in New York State, and provided further that such investment shall be subject to the further conditions set forth in this Part.

§ 68.2 Investments in service agencies

The corporations in which investments are authorized under this Part shall be established and operated for the primary purpose of providing services and common facilities to member savings and loan associations and others. For the purposes of this Part, such a corporation is referred to as a "service agency."

§ 68.3 Investments in capital stock of service agency

No savings and loan association shall invest in the capital stock of a service agency if the aggregate amount of its investment in such stock, including a proposed investment, would exceed the greater of three tenths of one percent of the total assets of such savings and loan association or $ 3,000 as of the date of such investment.

§ 68.4 Investments in the capital notes or debentures of a service agency

(a) No savings and loan association shall invest in the capital notes or debentures of a service agency if:

(1) the aggregate amount of its investment in such notes and debentures, including the proposed investment, would exceed the greater of two percent of the total assets of such savings and loan association as of the date of such investment or $ 10,000; or

(2) the aggregate amount of capital notes and debentures of such service agency then issued and outstanding, including the notes and debentures proposed to be purchased by such savings and loan association would exceed an amount equal to 12 times the issued and outstanding stock, surplus and undivided profits of such service agency.

(b) Nor shall any savings and loan association invest in such capital notes or debentures, unless:

(1) such service agency shall have filed with the[superintendent] Superintendent its written agreement (and shall have complied with the terms thereof) subjecting itself to the supervision of the Department, submitting itself to periodic examinations by the Department at such times and in such manner as the [superintendent] Superintendent shall provide, and agreeing to pay the charges of such examinations assessed against it by the superintendent in the same manner as if it were a banking organization organized under the laws of New York; and

(2) such service agency restricts the investment of its funds to:

(i) investments which savings and loan associations may make under the laws of this State; provided, however, that such service agency may make investments which would be permitted a savings and loan association under section 379(7) of the Banking Law, subject to those limitations applicable to such investments in the case of savings banks, except that the limitations contained in section 235(31)(a) and (b) which restrict certain individual investments to one per centum of the assets of the savings bank or 10 per centum of its net worth, whichever is less, and the aggregate amount of such investments to two per centum of its assets or 20 per centum of its net worth, whichever is less, shall be changed to establish a limitation of an aggregate amount of not to exceed 30 per centum of the service agency's net worth;

(ii) investments in the stock of certain corporations which a service agency may make under section 62.3 of this Title (relating to housing and urban development projects), subject to the limitations thereof;

(iii) bonds and mortgages and notes and mortgages or part interests therein, on improved and unencumbered real property, including leasehold estates, located in New York State or any other State of the United States, the District of Columbia or the Commonwealth of Puerto Rico, which would qualify as investments for savings and loan associations under the laws of this State, except for restrictions governing the locations

of the property or the location of the principal office of the holder or any part interest; and

(iv) such other investments as the [superintendent] Superintendent shall approve in writing.

§ 68.5 Revocation, rescission or modification

Any investment made under this Part may be rendered ineligible for investment at any time by further action of the [superintendent] Superintendent.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGUALTIONS
PART 69
MANDATORY TRANSFERS TO SURPLUS FOR THRIFT INSTITUTIONS PURSUANT TO BANKING LAW, §§ 244(3) AND 387(1)

(Statutory authority: Banking Law, §§ 244[3], 387[1])

Sec.

69.1 Transfers to surplus funds of savings banks

69.2 Credits to surplus account of savings and loan associations

§ 69.1 Transfers to surplus funds of savings banks

If, at the close of any accounting period, the net worth of any savings bank is less than 10 per centum of the amount due to depositors, 10 per centum of its net earnings for such period shall be credited to its surplus fund, or so much thereof less than 10 per centum as will make such net worth equal to 10 per centum of the amount due to depositors.

§ 69.2 Credits to surplus account of savings and loan associations

When the net profits of any savings and loan association have been determined at the close of an accounting period, if its surplus account does not equal 10 per centum of its capital, five per centum of such net profits shall be credited to its surplus account, or so much thereof less than five per centum as will make such surplus account equal to 10 per centum of its capital.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUERINTENDENT'S REGULATIONS
PART 70
INTERLOCKING DIRECTORS AND OFFICERS OF BANKING ORGANIZATIONS AND BANK HOLDING COMPANIES

(Statutory authority: Banking Law, §§ 130[3][b], 143[3][b], 209[3], 247[5][b], 399[5][b], 399-a[2])

Sec.
70.1 Definitions
70.2 Exceptions

§ 70.1 Definitions

The term executive officer as defined in this Part means each officer of a bank, trust company, bank holding company, foreign banking corporation, national bank, savings bank, savings and loan association or Federal savings and loan association who participates or has authority to participate in major policymaking functions of the institutions, regardless of whether he has an official title or whether his title contains a designation of assistant, and regardless of whether he is serving without salary or other compensation, provided that the chairman of the board of directors, the president, each vice-president, the cashier, the secretary and the treasurer are presumed to be executive officers, unless, by resolution of the board of directors or board of trustees, or by the bylaws of such institutions, any such officer is excluded from participation in major policymaking functions, and does not actually participate therein.

§ 70.2 Exceptions

The [superintendent] Superintendent may, grant permission to one or more executive officers of any institution or institutions of a type named in section 70.1 of this Part to be an executive officer, director or trustee, or both an executive officer and a director or trustee, of any other such institution. Such permission may be granted after review by the [superintendent] Superintendent of an application made by such executive officer or officers, or by such an institution which presently has, or is actively considering the election of, one or more such executive officers as an executive officer, director or trustee, or both an executive officer and a director or trustee, of the applying institution.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 71

ISSUANCE OF SUBORDINATED SECURITIES BY SAVINGS BANKS AND SAVINGS AND LOAN ASSOCIATIONS

(Statutory authority: Banking Law, §§ 234[5-b], 382-b[2])

Sec.
71.1 Definitions
71.2 Approval of Superintendent [of Banks]
71.3 Restrictions and requirements as to securities
71.4 Applications
71.5 Reports

§ 71.1 Definitions

As defined in this Part, the term *savings institution* means a savings bank or savings and loan association; and the term *subordinated debt security* means any unsecured note, bond, debenture, or other obligation or security issued pursuant to section 234(5-b) or 382-b(2) of the Banking Law, but shall not mean any note, bond, debenture, or other obligation or security subordinated to the claims of depositors issued to the Federal Deposit Insurance Corporation of the Federal Savings and Loan Insurance Corporation.

§ 71.2 Approval of Superintendent [of Banks]

(a) No savings institution shall issue subordinated debt securities unless it shall have obtained the prior written approval of the Superintendent [of banks]. The Superintendent [of Banks] may grant approval in principle of the issuance of the subordinated debt securities, based on preliminary drafts of documents submitted with the application pursuant to section 71.4 of this Part. Final written approval, however, will not be given until final copies of the documents have been submitted to the Department and reviewed.

(b) In granting approval, the Superintendent [of Banks] may impose such restrictions and limitation on a particular issue as he shall deem necessary. Upon receipt of the [superintendent's] Superintendent's final written approval, the applicant may proceed to issue the securities described in the application and in the manner described therein.

(c) Written approval of the Superintendent [of Banks] shall also be required for any subsequent amendment to the terms or conditions governing the original issue.

§ 71.3 Restrictions and requirements as to securities

(a) No subordinated debt securities may be issued by a savings institution in denominations of

less than $ 50,000, or with an original maturity of less than seven years.

(b) Each certificate, note or other evidence of subordinated debt issued pursuant to this Part shall:

(1) indicate clearly on its face, in boldface type, that the security does not represent a savings account or other deposit and is not insured by any government agency;

(2) clearly state that the security is subordinated, as to principal and interest, to all deposits of the issuing savings institution, and is unsecured; and

(3) state the terms, if any, under which the issuing savings institution may prepay or call the obligation.

(c) No optional payment in whole or in part of the unpaid principal of subordinated debt securities shall be made without prior written approval of the [superintendent] Superintendent.

§ 71.4 Applications

(a) Each application by a savings institution to issue subordinated debt securities pursuant to this Part shall be in letter form and be accompanied by:

(1) a specimen of the certificates, notes or debentures to be issued, a copy of the proposed agreement or indenture pursuant to which the securities are to be issued, and a copy of any other agreement relating to the sale or distribution of the issue. Such documents may be in preliminary draft form but shall contain the basic provisions, terms, restrictions, and covenants relating to the issue. Definitive copies of documents shall be filed with the Department as soon as available, and should be marked to indicate changes from prior drafts submitted;

(2) a certified copy of a resolution of the board of trustees or directors of the issuing institution:

(i) approving the issuance of subordinated debt securities in a specified maximum amount, the maximum interest rate at which the securities may be issued, the form and content of the note or certificate to be issued, the agreement of indenture and any collateral agreements; and

(ii) designating an officer or officers to submit application for approval to the appropriate supervisory authorities and to take other necessary action in connection therewith.

(b) Each application shall include the following information (a cross reference to the appropriate section of the relevant agreement or indenture may be substituted):

(1) the aggregate dollar amount of the proposed issue and the lowest denomination to be issued;

(2) interest rate or rates to be paid (if such rate or rates is not determinable at the time the application is filed, a maximum rate should be estimated);

(3) an estimate of the effect on net annual operating income attributable to the issuance of subordinated debt securities;

(4) the maturity date of the proposed issue or, if maturing serially, a schedule of amounts and maturity dates;

(5) details of call, prepayment, and sinking fund provisions, or any of them;

(6) details of any covenants to be agreed to by the issuing institution, together with a specific explanation of the necessity for any covenants that place greater restrictions on the issuing institution than restrictions imposed on such institution by the provisions of the Banking Law or regulations issued thereunder;

(7) a statement of the intended use of the proceeds;

(8) a statement of the expected source of funds for repayment of the issue; and

(9) an opinion of counsel for the applicant that the issue is in compliance with all applicable State and Federal statutes and regulations relating to the issuance and sale of securities and is consistent with the issuing institution's charter and bylaws.

(c) The Superintendent [of Banks] reserves the right to require additional information in connection with a particular application.

§ 71.5 Reports

Within 30 days after the completion of the sale of subordinated debt securities, the savings institution shall file a report of the transaction with the Superintendent [of Banks] stating the total face value of the securities sold, the rate of interest agreed upon and the net proceeds to the issuing institution. In addition, the issuing savings institution shall submit two condensed statements of condition acknowledged by its chief executive or financial officer: one as of the close of business on the day immediately preceding the sale and the other as of the close of business on the day on which the sale was consummated.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 72
INVESTMENTS IN CERTIFICATES OF DEPOSIT OF BANKING CORPORATIONS
(Statutory authority: Banking Law, §§ 235[2-a], 379[5])

Sec.
72.1 Permissible investments
72.2 Applicability

§ 72.1 Permissible investments

Savings banks and savings and loan associations may invest in certificates of deposit of a banking institution described in section 235(12-a)(b) of the Banking Law which has total assets of less than $ 1 billion only if such certificates are issued by and payable in United States dollars at an office of such banking institution located within one of the states of the United States of America, and in certificates of deposit of a banking institution described in section 235(12-a)(b) of the Banking Law which has total assets of $ 1 billion or more only if such certificates are payable in United States dollars.

§ 72.2 Applicability

This Part shall apply to investments made by savings banks and savings and loan associations on and after June 19, 1974, but shall not require the disposition of any investment theretofore made, not in conformity with this Part, prior to normal or earliest optional maturity date of such investment.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 73

ELECTRONIC FACILITIES

(Statutory authority: Banking Law, §§ 14[1], 105-a, 240-a, 396-a)

Sec.
73.1 General statement
73.2 Definitions
73.3 Establishment or sharing of electronic facilities
73.4 Sharing facilities
73.5 Facilities not requiring notification
73.6 Contents of notice
73.7 Restrictions on electronic facilities

§ 73.1 General statement

A banking organization may conduct a banking business at electronic facilities that are either established (i.e., owned or rented by a single organization) or shared, on a transaction fee or similar basis, by such banking organization, subject to the provisions of this Part. Such facilities are not branches but are subject to the limitations contained in sections 28-b and 105(1)(ii), 240(2)(b) or 396(2)(b) of the Banking Law, as the case may be, as if they were branches. In addition to the requirements of this Part, automated teller machines must comply with the security measures and reporting requirements set forth in Article II-AA of the New York Banking Law and Part 301 of the Superintendent's Regulations.

§ 73.2 Definitions

For the purposes of this Part:

(a) Electronic facilities shall mean automated teller machines, point-of-sale terminals, and similar facilities at which the banking business may be conducted. Such terms shall not include home banking terminals, telexes and similar equipment.

(b) Automated teller machines shall mean electronic devices, either on-line or off-line, which permit deposits, withdrawals, transfers of funds from one account to another, loan repayments or disbursements of funds pursuant to prearranged lines of credit. Except for facilities staffed for the purposes cited in section 73.7 of this Part, they shall not include staffed facilities.

(c) Point-of-sale terminals shall mean electronic devices, either on-line or off-line, whose function is to transfer funds or record transfers of funds in connection with the sale of goods or services but which may also be used to accept deposits and loan repayments, make cash withdrawals, and obtain funds pursuant to prearranged lines of credit. These terminals may be located only at bona fide checkout counters, cashier stations, customer convenience counters

or other counters at which store functions are performed, or sales desks of other establishments, and may not be staffed by bank employees, with the exceptions noted in section 73.7 of this Part.

(d) Similar facilities shall mean electronic devices, either on-line or off-line, which may be used for making deposits, withdrawals, transfers of funds, loan repayments or disbursements of funds pursuant to prearranged lines of credit. Except as otherwise provided in section 73.7 of this Part, such facilities, if part of a store's bona fide customer convenience counter or other counter at which store functions are performed, or sales desks of other establishments, may be staffed but only by nonbank employees; if located anywhere else, they may not be staffed.

(e) Banking organizations shall mean banks, trust companies, savings banks, savings and loan associations, and out-of-state banks with one or more branches in New York.

§ 73.3 Establishment or sharing of electronic facilities

Any banking organization that has given the Superintendent the notice described in section 73.6 of this Part may establish or share an electronic facility upon receipt of written notification from the Superintendent that he or she does not object to the establishment or sharing of such facility. The Superintendent shall not object to the establishment or sharing of an electronic facility unless the banking organization submitting the notice fails to meet the requirements of Banking Law, section 28-b and Part 76 of this Title or the establishment or sharing of such facility is prohibited by the home office protection provisions of Banking Law, section 105(1)(ii), 240(2)(b) or 396(2)(b).

§ 73.4 Sharing facilities

To the extent consistent with law, banking organizations may share electronic facilities they have established with other banking organizations, banking institutions not subject to the provisions of this Part, and nonbanking entities, and may share electronic facilities established by other banking organizations, banking institutions not subject to this Part or nonbanking entities.

§ 73.5 Facilities not requiring notification

The following activities do not require notification to the Superintendent under this Part:

(a) the establishment by a banking organization of an electronic facility on the premises of one of its authorized, staffed banking offices or attached to the outer wall of such an office;

(b) the establishment or sharing of an electronic facility to the extent it is used solely to effect transactions among banking institutions, clearinghouses, clearing corporations, governmental institutions or governmental agencies, business firms or similar organizations, or between or more of these types of organizations; and

(c) the sharing of an electronic facility when the customers or the sharing institution may use the facility solely to obtain information about account balances, make cash withdrawals (including those that require transfers of funds among a customer's accounts), and obtain cash advances against credit lines.

§ 73.6 Contents of notice

The notice to the Superintendent for the establishment or sharing of an electronic facility shall include the following:

(a) the complete address of the proposed facility, including the name of the city, village, hamlet, or town in which the site is physically located (rather than that which is used in the mailing address, if different);

(b) identification of the type of facility and a statement as to whether the facility will have deposit-taking capability;

(c) a statement as to whether the facility will be shared initially;

(d) details of any transaction involving the establishment or initial sharing of the facility with an insider as defined in Part 11 of this Title or with any related interest of such a person; and

(e) any additional information which the Department may require on a case-by-case basis.

§ 73.7 Restrictions on electronic facilities

(a) No electronic facility may be staffed by employees of a banking organization. However, employees of a banking organization may be used to demonstrate the equipment, to train nonbank employees for a reasonable period of time, to provide information, to repair and service the electronic equipment, or as security guards.

(b) All banking organizations shall take the necessary steps to protect their interests in the activities of their electronic facilities, including the acquisition of appropriate fidelity and other insurance coverage, and to safeguard the identity of bank customers in the use of such facilities.

(c) No new accounts may be opened at electronic facilities, and no cash, check, money order or draft of any kind may be taken with application forms if such forms are filled out and left at the electronic facility.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 75

CREDIT CARD ISSUANCE BY CREDIT UNIONS
(Statutory authority: Banking Law, §§ 14[1], 470)

Sec.

75.1 Issuance of credit cards

§ 75.1 Issuance of credit cards

State-chartered credit unions are authorized to issue credit cards to their members, for purposes of providing such members with access both to overdraft loans and/or cash advances and to purchases of goods or services, to the extent not inconsistent with the provisions of article XI of the Banking Law, provided that overdraft loans and/or cash advances shall be made on the terms and conditions contained in subdivision 5 of section 108 of the Banking Law, and that credit extensions shall be made pursuant to the provisions of section 413 of the Personal Property Law.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS

PART 76
COMPLIANCE WITH COMMUNITY REINVESTMENT ACT REQUIREMENTS

(Statutory authority: Banking Law, §§ 10, 14[1], 28-b)

Sec.
76.1 Statement of Policy; explanation
76.2 Definitions
76.3 Filing requirements
76.4 Review of applications
76.5 Community Reinvestment Act assessments; public disclosure
76.6 Assessment area delineation
76.7 Performance tests and standards
76.8 Lending test
76.9 Investment test
76.10 Service test
76.11 Community development test for wholesale or limited purpose banking institutions
76.12 Small banking institution performance standards
76.13 Strategic plan
76.14 High cost areas
76.15 Other documents

§ 76.1 Statement of policy; explanation

In enacting the CRA, the New York State Legislature required the [superintendent] Superintendent to assess a banking institution's record of helping to meet the credit needs of the local communities in which the banking institution is chartered, consistent with the safe and sound operation of the banking institution, and to take this record into account in the Department's evaluation of those applications by banking institutions which are enumerated in sections 28-b, 225 and 413 of the New York State Banking Law. This Part is intended to carry out the purposes of the CRA. This Part establishes the framework and criteria by which the Department assesses a banking institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the banking institution. In conducting such an assessment, the Department may evaluate the banking institution by performing its CRA examination on-site at

the institution or, alternatively, at the Department; may require the submission of written responses to Department requests for documentation and other information, including responses to the so-called "First Day Letter" or similar requests; may interview banking institution personnel; may conduct branch visits; and may require any other information or documentation, or utilize any other procedure that the [superintendent] Superintendent deem necessary. With respect to New York State-chartered multi-state banking institutions, the Department will rely, in part, on the CRA evaluation by the host state, commonwealth or territory with regard to the branches located in the host state, commonwealth or territory or, in those instances in which there is no host state, commonwealth or territory CRA evaluation, upon the CRA evaluation of the appropriate Federal regulatory authorities; however, the Department will independently review the factors set forth in section 28-b.3(a)(1), (2) and (3) of the Banking Law.

§ 76.2 Definitions

For purposes of this Part, the following definitions apply:

(a) Affiliate means any company, including a subsidiary, that controls, is controlled by, or is under common control with another company.

(b) Area median income means:

(1) the median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) the statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) Assessment area means a geographic area delineated in accordance with section 76.6 of this Part.

(d) Banking institution means a New York State-chartered commercial bank, trust company, savings bank, savings and loan association or FDIC insured branch of a foreign bank.

(e) Branch means a staffed banking facility approved as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(f) Community development means:

(1) affordable housing (including multifamily rental housing) for low or moderate-income individuals;

(2) community services targeted to low- or moderate-income individuals;

(3) activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs or have gross annual revenues of $ 1 million or less;

(4) activities that revitalize or stabilize:

(i) low- or moderate-income geographies;

(ii) designated disaster areas; or

(iii) distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and OCC, based on:

(a) Rates of poverty, unemployment and population loss; or

(b) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(5) activities that seek to prevent defaults and/or foreclosures in loans included in paragraphs (1) and (3) of this subdivision.

(g) Community development loan means a loan that:

(1) has as its primary purpose community development; and

(2) except in the case of a wholesale or limited purpose banking institution:

(i) has not been reported or collected by the banking institution or an affiliate for consideration in the banking institution's evaluation as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan; and

(ii) benefits the banking institution's assessment area(s) or a broader statewide or regional area that includes the banking institution's assessment area(s).

(h) Community development service means a service that:

(1) has as its primary purpose community development;

(2) is related to the provision of financial services; and

(3) has not been considered in the evaluation of the banking institution's retail banking services.

(i) Consumer loan means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) motor vehicle loan, which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) credit card loan, which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a "credit card;"

(3) home equity loan, which is a consumer loan secured by a residence of the borrower;

(4) other secured consumer loan, which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(5) other unsecured consumer loan, which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(j) Geography means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(k) Home mortgage loan means a home improvement loan, a home purchase loan, a multi-family loan or a refinance loan, including a refinance loan involving a modification, extension and consolidation agreement.

(l) Home state means the state where a state-chartered multi-state banking institution is chartered.

(m) Host state means a state other than the home state of a multi-state banking institution where the banking institution maintains a branch.

(n) Income level includes:

(1) low-income, which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

(2) moderate-income, which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

(3) middle-income, which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 and less than 120 percent, in the case of a geography.

(4) upper-income, which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more, in the case of a geography.

(o) Limited purpose bank means a banking institution that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose banking institution is in effect.

(p) Loan location. A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(q) Metropolitan division means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) MSA means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) Multi-state banking institution means a banking institution that maintains branches in one or more host states.

(t) Qualified investment means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) Regulation BB of the Board of Governors of the Federal Reserve System means Part 228 of Title 12, Code of Federal Regulations, Parts 220 to 299 Banks and Banking (revised as of January 1, 2006). (This publication may be viewed at the New York City office of the Department of Financial Services at the address set forth in section 1.1 of Supervisory Policy G1, and the Department of State located at 41 State Street, Albany, NY 12231. It is published by the Office of the Federal Register, National Archives and Records Administration and is for sale by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.)

(v) Small banking institution (1) Definition. Small banking institution means a banking institution that, as of December 31 of either of the prior two calendar years, had total assets of less than $ 1 billion. Intermediate small banking institution means a small banking institution with assets of at least $ 250 million as of December 31 of both of the prior two calendar years and less than $ 1 billion as of December 31 of either of the prior two calendar years.

(2) Adjustment. The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the Federal Financial Institutions Examination Council, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(w) Small business loan means a small business loan as defined in Regulation BB of the Board of Governors of the Federal Reserve System (12 CFR* part 228). This definition is based on the size of the loan.

(x) Small farm loan means a small farm loan as defined in Regulation BB of the Board of Governors of the Federal Reserve System (12 CFR* part 228). This definition is based on the size of the loan.

(y) Wholesale banking institution means a banking institution that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale banking institution by the appropriate Federal regulatory authority is in effect.

§ 76.4 Review of applications

The [superintendent] Superintendent [and the Banking Board] will consider the factors set forth in section 28-b of the Banking Law and the performance tests and standards set forth in

section 76.7 of this Part in assessing a banking institution's record of performance. Such assessment of a banking institution's record of performance, as set forth in this Part, may be the basis for denying an application by the [superintendent] Superintendent [or the Banking Board, as applicable]. Furthermore, the [superintendent] Superintendent [or the Banking Board] may condition the approval of any application as the facts and circumstances warrant.

§ 76.5 Community Reinvestment Act assessments; public disclosure

(a) From time to time, as determined by the [superintendent] Superintendent, the Department will conduct community reinvestment evaluations of each banking institution to which this Part applies. To the extent feasible, such evaluations will occur with the same frequency as, and coincide with, CRA examinations conducted by a banking institution's primary Federal regulator. In general, the Department will evaluate the CRA performance of a banking institution once every 24 to 36 months; except that banking institutions with total assets below $ 250 million and rated "Satisfactory" or "Outstanding" in their most recent CRA examination performed by the Department generally will be examined once every 48 or 60 months, respectively. The assessment will be based upon information compiled by the Department or obtained from other sources, including information obtained from other State and Federal banking regulators. This information will pertain to the factors set forth in section 28-b of the Banking Law and the performance tests and standards set forth in section 76.7 of this Part. The Department assigns a rating for a banking institution assessed under the factors set forth in Banking Law, section 28-b and the tests set forth in section 76.7 of this Part. The lending, investment and service performance for each banking institution evaluated under section 76.7(a)(1) of this Part shall be assigned one of the five following ratings: outstanding, high satisfactory, low satisfactory, needs to improve or substantial noncompliance. A banking institution's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The banking institution's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile. The Department assessment shall form the basis of the biennial numerical CRA rating based on a 1-4 scoring system assigned to each such institution by the Department. Specifically, such numerical scores shall represent performance assessments as follows:

- outstanding record of meeting community credit needs ("Outstanding" or "1");

- satisfactory record of meeting community credit needs ("Satisfactory" or "2");

- needs to improve record of meeting community credit needs ("Needs to Improve" or "3"); and

- substantial noncompliance in meeting community credit needs ("Substantial Noncompliance" or "4").

(b) Evidence of discriminatory or other illegal credit practices. (1) The Department's evaluation of a banking institution's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the banking institution or in any assessment area by any affiliate whose loans have been considered as part of the banking institution's lending performance. In connection with any type of lending activity described in section 76.8(a) of this Part, evidence of discriminatory or other credit practices that violate an applicable law, rule or regulation includes, but is not limited to:

(i) discrimination against applicants on a prohibited basis in violation, for example, of Section 296-a of the New York State Executive Law, the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) violations of either Section 6-l of the Banking Law or the Home Ownership and Equity Protection Act;

(iii) violations of section 5 of the Federal Trade Commission Act;

(iv) violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (b)(1) of this section on the banking institution's assigned rating, the Department considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the banking institution (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the banking institution (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and other relevant information.

(c) The Department will prepare a written summary of the results of such assessment. The CRA rating and the written summary will be made available to the public. In addition, each banking institution shall include a copy of such rating and the three most recent summaries in the banking institution's public file as required to be maintained by Federal CRA regulations.

§ 76.6 Assessment area delineation

(a) In general. A banking institution shall delineate one or more assessment areas within which the Department evaluates the banking institution's record of helping to meet the credit needs of its community. The Department does not evaluate the banking institution's delineation of its assessment area(s) as a separate performance criterion, but the Department reviews the delineation for compliance with the requirements of this section.

(b) Geographic area(s) for wholesale or limited purpose banking institutions. The assessment area(s) for wholesale or limited purpose banking institutions must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) Geographic area(s) for other banking institutions. The assessment area(s) for a banking institution other than a wholesale or limited purpose banking institution must:

(1) consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) include the geographies in which the banking institution has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the banking institution has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the banking institution chooses, such as those consumer loans on which the banking institution elects to have its performance assessed).

(d) Adjustments to geographic area(s). A banking institution may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) Limitations on the delineation of an assessment area. Each banking institution's assessment area(s):

(1) must consist only of whole geographies;

(2) may not reflect illegal discrimination;

(3) may not arbitrarily exclude low- or moderate-income geographies, taking into account the banking institution's size and financial condition; and

(4) must delineate separate assessment areas for the areas served by the banking institution in each state in those instances in which a banking institution serves a geographic area that extends substantially beyond a state boundary.

(f) Use of assessment area(s). The Department uses the assessment area(s) delineated by a banking institution in its evaluation of the banking institution's CRA performance unless the Department determines that the assessment area(s) do not comply with the requirements of this section.

§ 76.7 Performance tests and standards

(a) Performance tests and standards. The Department shall assess the CRA performance of banking institutions in an evaluation as set forth below:

(1) Lending, investment and service tests. The Department applies the lending, investment and service tests, as provided in sections 76.8, 76.9 and 76.10 of this Part, in evaluating the performance of a banking institution, except as provided in paragraphs (2), (3) and (4) of this subdivision.

(2) Community development test for wholesale or limited purpose banking institutions. The Department applies the community development test for a wholesale or limited purpose banking institution, as provided in section 76.11 of this Part, except as provided in paragraph (4) of this subdivision.

(3) Small banking institution performance standards. The Department applies the small banking institution performance standards, as provided in section 76.12 of this Part, in evaluating the performance of a small banking institution or a banking institution that was a small banking institution during the prior calendar year, unless the banking institution elects to be assessed as provided in paragraph (1), (2) or (4) of this subdivision. The banking institution may elect to be assessed as provided in paragraph (1) of this subdivision only if it collects and reports the Federal CRA data required for other banking institutions which are assessed pursuant to paragraph (1) of this subdivision.

(4) Strategic plan. The Department evaluates the performance of a banking institution under a strategic plan if the banking institution submits, and the Department approves, a strategic plan as provided in section 76.13 of this Part.

(b) Performance context. The Department will apply the tests and standards in subdivision (a) of this section and may also consider whether to approve a proposed strategic plan in the context of:

(1) demographic data including housing data and any other relevant data pertaining to a

banking institution's assessment area(s);

(2) the performance of all, including similarly situated, lenders in the banking institution's assessment area(s);

(3) lending, investment and service opportunities in the banking institution's assessment area(s);

(4) the banking institution's product offerings and business strategy;

(5) institutional capacity and constraints;

(6) the banking institution's past performance;

(7) the banking institution's public file as required to be maintained by Federal CRA regulations;

(8) the banking institution's market share in its assessment area;

(9) community input; and

(10) any other information deemed relevant by the Department.

§ 76.8 Lending test

(a) Scope of test. The scope of the lending test is as follows:

(1) The lending test evaluates a banking institution's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a banking institution's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a banking institution's business, the Department will evaluate the banking institution's consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at a banking institution's option, the Department will evaluate one or more categories of consumer lending, if the banking institution has collected and maintained the data required by Regulation BB of the Board of Governors of the Federal Reserve System (12 CFR * Part 228) for each category that the banking institution elects to have the Department evaluate.

(2) The Department considers originations and purchases of loans. The Department may also consider any other loan data the banking institution may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) The Department may consider loans originated or purchased by consortia in which the banking institution participates or by third parties in which the banking institution has invested.

(b) Performance criteria. The Department evaluates a banking institution's lending performance pursuant to criteria which may include the following:

(1) Lending activity. The number and amount of the banking institution's home mortgage, small business, small farm, and consumer loans, if applicable, in the banking institution's assessment area(s).

(2) Geographic distribution. The geographic distribution of the banking institution's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) the proportion of the banking institution's lending in the banking institution's assessment area(s);

(ii) the dispersion of lending in the banking institution's assessment area(s); and

(iii) the number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the banking institution's assessment area(s);

(3) Borrower characteristics. The distribution, particularly in the banking institution's assessment area(s), of the banking institution's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) small business and small farm loans to businesses and farms with gross annual revenues of $ 1 million or less;

(iii) small business and small farm loans by loan amount at origination;

(iv) consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals; and

(v) the banking institution's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low or moderate-income individuals.

(4) Community development lending. The banking institution's community development lending, including the number and amount of community development loans, and their complexity and innovativeness.

(5) Innovative or flexible lending practices. The banking institution's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) Affiliate lending. Affiliate lending will be considered as follows:

(1) At a banking institution's option, the Department will consider loans by an affiliate of the banking institution, if the banking institution provides data on the affiliate's loans to the Department. The data provided should contain the information specified in Section 228.42 of Regulation BB of the Board of Governors of the Federal Reserve System (12 CFR * Part 228).

(2) The Department considers affiliate lending subject to the following constraints:

(i) no affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) if a banking institution elects to have the Department consider loans within a particular lending category made by one or more of the banking institution's affiliates in a particular assessment area, the banking institution shall elect to have the Department consider all the loans within that lending category in that particular assessment area made by all of the banking institution's affiliates.

(3) The Department does not consider affiliate lending in assessing a banking institution's performance under subparagraph (b)(2)(i) of this section.

(d) Lending by a consortium or a third party. Community development loans originated or purchased by a consortium in which the banking institution participates or by a third party in which the banking institution has invested:

(1) will be considered, at the banking institution's option, if the banking institution reports to the Department the data specified in Section 228.42 of Regulation BB of the Board of Governors of the Federal Reserve System (12 CFR * Part 228) pertaining to these loans; and

(2) may be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) may claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) may claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

§ 76.9 Investment test

(a) Scope of test. The investment test evaluates a banking institution's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the banking institution's assessment area(s).

(b) Exclusion. Activities considered under the lending or service tests may not be considered under the investment test.

(c) Affiliate investment. At a banking institution's option, the Department will consider, in its assessment of a banking institution's investment performance, a qualified investment made by an affiliate of the banking institution, if the qualified investment is not claimed by any other institution.

(d) Performance criteria. The Department evaluates the investment performance of a banking institution pursuant to criteria which may include the following:

(1) the dollar amount of qualified investments;

(2) the innovativeness or complexity of qualified investments;

(3) the responsiveness of qualified investments to credit and community development needs; and

(4) the degree to which the qualified investments are not routinely provided by private investors.

§ 76.10 Service test

(a) Scope of test. The service test evaluates a banking institution's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a banking institution's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) Area(s) benefited. Community development services must benefit a banking institution's assessment area(s) or a broader statewide or regional area that includes the banking institution's assessment area(s).

(c) Affiliate service. At a banking institution's option, the Department will consider, in its assessment of a banking institution's service performance, a community development service provided by an affiliate of the banking institution, if the community development service is not claimed by any other institution.

(d) Performance criteria. The Department evaluates the availability and effectiveness of a banking institution's systems for delivering retail banking services, pursuant to criteria which may include the following:

(1) The current distribution of the banking institution's branches among low-, moderate-, middle-, and upper-income geographies, giving additional consideration to branches located adjacent to low- or moderate-income geographies when such branches can be shown to serve the needs of low- or moderate-income individuals;

(2) In the context of the current distribution of its branches, the banking institution's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or branches in adjacent geographies when such branches can be shown to serve the needs of low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the banking institution, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies or primarily serving low- or moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle- and upper-income geographies and to low-, moderate-, middle- and upper-income individuals and the degree to which the services are tailored to meet the needs of those geographies and individuals.

(e) Performance criteria. The Department evaluates community development services pursuant to criteria which may include the following:

(1) the extent to which the banking institution provides community development services; and

(2) the innovativeness and responsiveness of community development services.

(f) Other performance criteria.

(1) The Department will favorably consider a banking institution's marketing and/or advertising of its basic banking account as defined in section 14-f of the New York Banking Law and Part 9 of this Title or offering an approved alternative account which provides more advantageous terms for consumers than is required by section 14-f of the New York Banking Law and Part 9 of this Title.

(2) The Department will favorably consider a banking institution's efforts to establish a Banking Development District, as defined in Section 96-d of the New York Banking Law and Part 8 of this Title, within one or more of the institution's assessment areas.

§ 76.11 Community development test for wholesale or limited purpose banking institutions

(a) Scope of test. The Department assesses a wholesale or limited purpose banking institution's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) Designation as a wholesale or limited purpose banking institution. In order to receive a designation as a wholesale or limited purpose banking institution, a banking institution shall file a request, in writing, with the appropriate Federal regulatory authority in compliance with its rules and regulations regarding such designations. If the appropriate Federal regulatory authority approves the designation, it remains in effect until the banking institution requests revocation of the designation or until one year after the appropriate Federal regulatory authority notifies the banking institution that the designation has been revoked on its own initiative.

(c) Performance criteria. The Department evaluates the community development performance of a wholesale or limited purpose banking institution pursuant to criteria which may include the following:

(1) the number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the banking institution, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) the use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) the banking institution's responsiveness to credit and community development needs.

(d) Indirect activities. At a banking institution's option, the Department will consider in its community development performance assessment:

(1) qualified investments or community development services provided by an affiliate of the banking institution, if the investments or services are not claimed by any other institution; and

(2) community development lending by affiliates, consortia and third parties, subject to the requirements and limitations set forth in section 76.8(c) and (d) of this Part.

(e) Benefit to assessment area(s). Benefits to assessment area(s) are set forth below:

(1) Benefit inside assessment area(s). The Department considers all qualified investments, community development loans, and community development services that benefit areas within the banking institution's assessment area(s) or a broader statewide or regional area that includes the banking institution's assessment area(s).

(2) Benefit outside assessment area(s). The Department considers the qualified investments, community development loans, and community development services that benefit areas outside the banking institution's assessment area(s), but within New York State, if the banking institution has adequately addressed the needs of its assessment area(s).

§ 76.12 Small banking institution performance standards

(a) Performance criteria.

(1) Small banking institutions with assets of less than $ 250 million. The Department evaluates the record of a small banking institution that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) Intermediate small banking institutions. The Department evaluates the record of a small banking institution that is, or that was during the prior calendar year, an intermediate small banking institution, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) Lending Test. A small banking institution's lending performance is evaluated pursuant to the following criteria:

(1) the banking institution's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) the percentage of loans and, as appropriate, other lending-related activities located in the banking institution's assessment area(s);

(3) the banking institution's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) the geographic distribution of the banking institution's loans; and

(5) the banking institution's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) Community development test. An intermediate small banking institution's community development performance also is evaluated pursuant to the following criteria:

(1) the number and amount of community development loans;

(2) the number and amount of qualified investments;

(3) the extent to which the banking institution provides community development services; and

(4) the banking institution's responsiveness through such activities to community development lending, investment and service needs.

§ 76.13 Strategic plan

(a) Alternative election. The Department will assess a banking institution's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) the banking institution has submitted the plan to the Department as provided for in this section;

(2) the Department has approved the plan;

(3) the plan is in effect; and

(4) the banking institution has been operating under an approved plan for at least one year.

(b) Data reporting. The Department's approval of a plan does not affect the banking institution's obligation, if any, to report other required data.

(c) Plans in general. (1) Term. A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the Department will evaluate the banking institution's performance.

(2) Multiple assessment areas. A banking institution with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) Treatment of affiliates. Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(d) Public participation in plan development. Before submitting a plan to the Department for approval, a banking institution shall:

(1) informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) once the banking institution has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) during the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the banking institution in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) Submission of plan. The banking institution shall submit its plan to the Department at least three months prior to the proposed effective date of the plan. The banking institution shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) Plan content. The content of the plan shall be as follows:

(1) Measurable goals. (i) A banking institution shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A banking institution shall address in its plan all three performance categories and, unless the banking institution has been designated as a wholesale or limited purpose banking institution, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the banking institution's capacity and constraints, product offerings, and business strategy.

(2) Confidential information. A banking institution may submit additional information to the Department on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the Department to judge the merits of the plan.

(3) Satisfactory and outstanding goals. A banking institution shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. If a banking institution submits, and the Department approves, both "satisfactory" and "outstanding" performance goals, the Department will consider the banking institution eligible for an "outstanding" performance rating.

(4) Election if satisfactory goals not substantially met. A banking institution may elect in its plan that, if the banking institution fails to meet substantially its plan goals for a satisfactory rating, the Department will evaluate the banking institution's performance under the lending, investment, and service tests, the community development test, or the small banking institution performance standards, as appropriate.

(g) Plan approval. Approval of a plan shall be as follows:

(1) Timing. The Department will act upon a plan within 60 calendar days after receipt of the complete plan and other material required under subdivision (e) of this section. If the Department fails to act within this time period, the plan shall be deemed approved unless the Department extends the review period for good cause.

(2) Public participation. In evaluating the plan's goals, the Department considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the banking institution to public comment on the plan.

(3) Criteria for evaluating plan. The Department evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) the extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) the amount and innovativeness, complexity, and responsiveness of the banking institution's qualified investments; and

(iii) the availability and effectiveness of the banking institution's systems for delivering retail banking services and the extent and innovativeness of the banking institution's community development services.

(h) Plan amendment. During the term of a plan, a banking institution may request the Department to approve an amendment(s) to the plan on grounds that there has been a material change in circumstances. The banking institution shall develop an amendment(s) to a previously approved plan in accordance with the public participation requirements of subdivision (d) of this section.

§ 76.14 High cost areas

The Department recognizes that the demographics and housing characteristics of an area may be such that the gap between housing costs and area median income greatly restricts the affordability of owner-occupied housing for low- and moderate-income persons residing in such an area. At the same time, there may exist a shortage of credit which endangers the preservation, stabilization or improvement of middle-income geographies or limits access to credit for middle-income persons residing in such an area. Where, based on relevant, current and verifiable data (including but not limited to the most recent census data pertaining to such area) these conditions are found to exist, the department may, in its assessment of the institution's performance, be flexible in its consideration of a banking institution's activities pertaining to owner-occupied housing in middle-income geographies or for middle-income individuals residing in such an area. Consideration of such activities shall be in addition to, and not in lieu of, consideration of activities in low- or moderate-income geographies and activities which serve low- or moderate-income individuals.

§ 76.15 Other documents

When taking any action under section 29 of the Banking Law relating to the opening of a branch or public accommodation office or under section 601-b of the Banking Law relating to the approval or disapproval of a merger or purchase of assets, the [superintendent] Superintendent shall request from the applicant banking institution and from the appropriate Federal bank regulatory authorities any documents, other than those required to be filed with the [superintendent] Superintendent by this Part or by other applicable statutes or regulations:

(a) filed with the Federal bank regulatory authorities in connection with the application; or

(b) produced by the applicant banking institution or others in connection with the application.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 77

INVESTMENTS IN COMMERCIAL, CORPORATE AND BUSINESS LOANS BY SAVINGS BANKS AND SAVINGS AND LOAN ASSOCIATIONS; LEASING TRANSACTIONS; LETTERS OF CREDIT

(Statutory authority: Banking Law, §§ 14[1], 235[8-c],[28-b], 380-j, 380-k)

Sec.

77.1 Explanatory note

77.2 Definition

77.3 Loans to one borrower

77.4 Participations

77.5 Letters of credit

77.6 Leasing

§ 77.1 Explanatory note

Sections 235(8-c) and 380-k of the Banking Law permit savings banks and savings and loan associations to invest in promissory notes representing commercial, corporate or business loans subject to the individual and aggregate restrictions provided therein. Sections 235(28-b) and 380-j permit such institutions to acquire and lease personal property. Other provisions of the Banking Law empower such institutions to invest in loans secured by mortgages on commercial real estate, and such loans are often made to corporate obligors or other business entities. Moreover, such institutions may, under other provisions of law, invest in certain corporate interest-bearing securities. The authority to make the investments referred to in this section are additional authority and, except as specifically provided herein, shall not be deemed to limit the investment authority of such institutions which is provided under any other provision of law.

§ 77.2 Definition

For purposes of this Part, the term commercial, corporate or business loan shall mean any loan, represented by a promissory note, or other evidence of indebtedness, not otherwise

authorized or permitted by any other provision of the Banking Law, made by a savings bank or a savings and loan association:

(a) to a partnership, corporation or unincorporated association; or

(b) to a natural person for purposes other than personal, family or household use;

provided that any loan that would otherwise qualify as a commercial, corporate or business loan but for the fact that such loan also qualifies as an investment under section 235(31) or 379(7) of the Banking Law may, at the election of the savings bank or savings and loan association, be treated as a commercial, corporate or business loan for purposes of this Part. In determining whether a loan to a natural person is a commercial loan, a savings bank or savings and loan association may rely on the borrower's statement of purpose if accepted in good faith.

§ 77.3 Loans to one borrower

(a) The aggregate unpaid principal amount of all commercial, corporate and business loans (including lease financing) to any borrower made by a savings bank or savings and loan association shall, if unsecured, not exceed 15 per centum of the net worth of such savings bank or savings and loan association or, if secured, shall not exceed such percentage amounts in relation to net worth as are applicable to banks and trust companies under the provisions of section 103(1) of the Banking Law.

(b) In computing the total commercial, corporate, and business loans by any savings bank or savings and loan association:

(1) to any natural person, there shall be included all commercial, corporate and business loans by the institution to any partnership or unincorporated association of which he is a member, and all commercial, corporate and business loans made for his benefit or for the benefit of such partnership or association;

(2) to any partnership or unincorporated association, there shall be included all commercial, corporate and business loans by the institution to its individual members and all commercial, corporate and business loans made by the institution for the benefit of such partnership or unincorporated association or any member thereof;

(3) to any corporation, there shall be included all commercial, corporate and business loans made by the institution for the benefit of the corporation. A loan shall be deemed to be made for the benefit of a corporation only to the extent that the proceeds of such loan:

(i) are to be loaned to the corporation;

(ii) are to be used for acquisition (otherwise than in connection with a public offering) from the corporation by a person in control of, or under common control with, the corporation of any stock or other securities issued by the corporation; or

(iii) are to be transferred to the corporation without fail and adequate consideration, and the discharge of an equivalent amount of debt previously incurred in good faith and for value shall be considered fair and adequate consideration. A loan shall not be deemed to be made for the benefit of a corporation if such loan is made to a person other than the corporation and is secured as provided in section 235(5-a), 235(6) or 380(1) of the Banking Law and regulations promulgated thereunder or is secured by collateral having an ascertained market value, orotherwise having a value as collateral as found in good faith by an officer of such institution, at least equal to the amount of the loan; provided that stock or other securities issued by, or in lien on property of, such corporation shall not be considered collateral for the purposes of this provision.

(c) Notwithstanding compliance by the institution with the provisions of subdivision (a) of this section, if the aggregate unpaid principal amount of commercial, corporate or business loans made by the institution to a borrower together with the aggregate unpaid principal amount of other loans or leases to and letters of credit opened for, and the amount of other investments in, such borrower under other provisions of the Banking Law exceeds prudent lending standards, the Department may criticize such undue concentration of credit and take such other supervisory action with respect thereto as may be deemed necessary or appropriate.

§ 77.4 Participations

A savings bank or savings and loan association may participate in and invest in any loan:

(a) which, if originated by another savings bank or savings and loan association, satisfies all the requirements of this Part; or

(b) which, if originated by any other lender, is made either:

(1) to a partnership, corporation or unincorporated association; or

(2) to a natural person for purposes other than personal, family or household use.

Any participation or investment made pursuant to the provisions of this section shall be deemed to be a commercial, corporate or business loan made by the participating institution

for purposes of this Part. No authority to participate in letters of credit shall be deemed granted hereunder.

§ 77.5 Letters of credit

For purposes of sections 235(8-c) and 380-k of the Banking Law, a commercial, corporation or business loan shall be deemed to include commercial letters of credit and standby letters of credit as a category of commercial loan transaction so long as they meet the requirements of this section. However, all amounts to be drawn under commercial letters of credit and the amounts for which a savings bank or savings and loan association makes a commitment under a standby letter of credit are to be aggregated and shall usually be considered unsecured loans. Consequently, they shall be subject to the 15 per centum unsecured loan limit per borrower. The following requirements apply to commercial letters of credit and to standby letters of credit:

(a) each letter of credit must conspicuously state that it is a letter of credit;

(b) the institution's undertaking must contain a specified expiration date or must be for a definite term;

(c) the institution's undertaking must be for a stated and limited amount;

(d) the institution's obligation to pay must arise only upon presentation of a draft or other documents as specified in the letter of credit and the institution must not be called upon to determine questions of fact or law at issue between the parties to the underlying transaction; and

(e) the customer of the institution must have an unqualified obligation to reimburse the savings bank or or savings and loan association for payments made under the letter of credit.

All amounts representing obligations entered into under commercial or standby letters of credit must be reported to the Board of Trustees of the savings bank or the Board of Directors of the savings and loan association in the same manner as set forth for loans in section 252 of the Banking Law.

§ 77.6 Leasing

(a) Pursuant to Banking Law, sections 235(28-b) and 380-j, a savings bank and a savings and loan association may acquire and lease personal property.

(b) Such leases are subject only to the same limitations as are imposed on such investments for commercial banks or trust companies under Banking Law, section 96(12) and, to the extent they are deemed to be loans, to individual borrowing limitations.

(c) For loan limit purposes, such leases are considered to be secured loans to the lessee except to the extent there is a net unrecovered investment at the end of the lease term. To that extent, the lease is considered an unsecured loan.

(d) Lease payments are considered to be in the nature of rent and not interest.

(e) All leases authorized hereunder must be on a nonoperating basis. For instance, for purposes of automobile leasing, the savings bank or savings and loan association may not directly or indirectly, provide for the servicing, repair or maintenance of the leased vehicle during the lease term; purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; provide for the loan of an automobile during servicing of the leased vehicle; purchase insurance for the lessee; or provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 78

PERSONAL LOAN DEPARTMENTS OF SAVINGS BANKS AND SAVINGS AND LOAN ASSOCIATIONS

(Statutory authority: Banking Law, §§ 14[1], 235[8-b], 380-i)

Sec.

78.1 Explanatory note

78.2 General authority for personal loan department

§ 78.1 Explanatory note

Sections 235(8-b) and 380-i of the Banking Law permit savings banks and savings and loan associations, respectively, to operate personal loan departments. Other long-standing provisions of the Banking Law empower savings banks and savings and loan associations to invest in certain secured and unsecured personal loans. The authority to operate a personal loan department pursuant to sections 235(8-b) and 380-i is an additional authority and, except as specifically provided herein, shall not be deemed to limit the investment authority of a savings bank or savings and loan association which is provided under any other provision of the law.

§ 78.2 General authority for personal loan department

A savings bank and savings and loan association may operate a personal loan department under the same requirements as are provided in section 108(4) of the Banking Law for a bank or trust company and may make any loan or advance that a bank or trust company may make pursuant to the provisions of section 108(4)-(5) of the Banking Law on the same terms and conditions as provided in such sections.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 79

REVERSE MORTGAGE LOANS

(Statutory authority: Banking Law, Section 6-h; Real Property Law §§ 280, 280-a)

Sec.

79.1 Authorization

79.2 Definitions

79.3 Approval for mortgage bankers and other entities to make reverse mortgage loans

79.4 Procedures

79.5 Requirements for 280 and 280-a loans

79.6 Additional features of 280 loans

79.7 Additional features of 280-a loans

79.8 Maintenance of real property securing reverse mortgage

79.9 Termination of 280 and 280-a loans

79.10 Permitted fees, costs and payments

79.11 Required disclosures for 280 and 280-a loans

79.12 Availability of 280 and 280-a loans

79.13 Administrative penalties

79.14 Special provisions regarding payment of real estate taxes and insurance

79.15 Policies and procedures

§ 79.1 Authorization to make reverse mortgage loans

(a) Notwithstanding any provisions of law or regulation to the contrary, Section 6-h of the Banking Law, Sections 280 and 280-a of the Real Property Law and this Part constitute the exclusive authority for lenders, as that term is defined in Section 79.2 of this Part, to

make or participate in reverse mortgage loans and, in connection therewith, to compound interest. General Regulations of the [Banking Board] Superintendent Parts 38, 39, 80 and 82 of this Title shall not apply to the origination of or participation in reverse mortgage loans.

(b) (b) Neither this Part nor Parts 38, 39, 80 or 82 shall apply to any loan which conforms to the requirements of the Demonstration Program of Insurance of Home Equity Conversion Mortgages for Elderly Homeowners, also known as the "HUD/HECM" reverse mortgage loan program, 12 USC §1715z-20.

(c) (c) Notwithstanding any provisions of this Part to the contrary, reverse mortgage loans, which are originated pursuant to a commitment to purchase by the Federal National Mortgage Association ("FNMA") and which otherwise comply with FNMA Guidelines and Section 280 or 280-a of the New York Real Property Law, shall be deemed to be in compliance with this Part. However, Section 79.12(a) of this Part shall continue to apply to lenders making such loans.

§ 79.2 Definitions

For purposes of this Part:

(a) The terms authorized lender or lender shall mean any bank, trust company, national banking association, savings bank, savings and loan association, federal savings bank, federal savings and loan association, credit union, federal credit union, and any licensed mortgage banker and any other entity approved by the [superintendent] Superintendent for the making of reverse mortgage loans pursuant to Section 79.3 of this Part.

(b) A 280 loan shall be a loan made under Section 280 of the Real Property Law.

(c) A 280-a loan shall be a loan made under Section 280-a of the Real Property Law.

(d) The term reverse mortgage loan shall mean a 280 or 280-a loan which is secured by a first mortgage on real property improved by a one to-four family residence or condominium that is the residence of the mortgagor(s), the proceeds of which are advanced to the mortgagor(s) during the life of the loan in equal installments, in advances through a line of credit or otherwise, in lump sums, or through a combination thereof. A reverse mortgage loan may be for a fixed "term" to maturity or be a "tenure" loan as those terms are defined in Sections 280 and 280-a of the Real Property Law. A reverse mortgage

loan may provide for the purchase of an annuity by the mortgagor(s). A reverse mortgage loan may not be secured by certificates of stock or other evidence of ownership interests in and proprietary leases from corporations or partnerships formed for the purpose of cooperative ownership of real property.

(e) The term mortgagor in a 280 loan shall refer to a tenant who is 60 years of age or older, or if the real property is held by tenants by the entirety or by joint tenancy, the youngest of whom is sixty 60 years of age or older.

(f) The term mortgagor in a 280-a loan shall refer to a tenant who is 70 years of age or older, or if the real property is held by tenants by the entirety or by joint tenancy, the youngest of whom is 70 years of age or older and whose income does not exceed 80 percent of the median income of the county in which he or she resides.

§ 79.3 Approval for mortgage bankers and other entities to make reverse mortgage loans

(a) For purposes of this Part, in addition to any other requirements of New York law, licensed mortgage bankers, insurance companies, insured branches of foreign banks, nationally based not-for-profit organizations and consolidated subsidiaries, as that term is defined in section 39.2(c) of this Title, of any of the following: insurance companies, banking organizations as that term is defined in section 2 of the Banking Law, foreign banking corporations licensed by the Superintendent or the Comptroller of the Currency to transact business in this State, national banks, Federal savings banks, Federal savings and loan associations, federal credit unions, or of any bank, trust company, savings bank, savings and loan association, or credit union organized under the laws of any other state must comply with the following requirements before offering reverse mortgage loans:

(1) In addition to the financial responsibility requirements set forth in Section 410.1 of the Superintendent's Regulations, the entities identified in subdivision (a) of this Section shall maintain an irrevocable standby letter of credit approved by the Superintendent in favor of the lender in an amount necessary to fund all reverse mortgage loan requirements anticipated over the next 12 months for loans then on the lender's books and those expected to be made over the next 12 months or $ 3,000,000.00, whichever is greater. The initial term of the letter of credit shall be at least two years.

(2) The financial institution that provides the letter of credit as required in paragraph (1) of this subdivision may not be affiliated with the lender.

(3) A lender with a rating of either 4A1 or 5A1 from Dun & Bradstreet Credit Services for three consecutive years is exempt from the requirements set forth in paragraph (a) (1) of this section.

(b) The lender shall maintain a minimum capital of $ 10,000,000.00.

(c) A lender may rely on the capital of its parent to satisfy the requirements of subdivision (b) of this section provided that for any year in which a lender seeks to so rely, it shall provide to the Department a certified financial statement of the parent showing a net worth of at least $ 100,000,000.00 as of the close of its most recent fiscal year and a binding written commitment from the parent to the lender to make a minimum of $ 10,000,000.00 available to the lender as a capital contribution in connection with its reverse mortgage lending program.

(d) Subdivisions (a) and (b) of this section shall not apply to a lender that:

(1) only originates reverse mortgage loans the proceeds of which are fully disbursed at the loan closing; or

(2) only originates reverse mortgage loans that are sold into the secondary market to an investor with either a 4A1 or 5Al rating from Dun & Bradstreet Credit Services. Lenders that make such sales shall be required to obtain a written commitment to purchase such loans from the investor prior to closing and shall arrange for the delivery of such loans to the investor within 10 days of the loan closing; or

(3) only originates reverse mortgage loans which are structured to provide for the purchase of an annuity with payments made to the mortgagor(s) commencing no more than 30 days after the loan closing and where the reverse mortgage loan principal is comprised only of the cost of the annuity and any financed fees, costs and payments permitted pursuant to section 79.10 of this Part.

(e) In addition to the financial requirements set forth in this section, lenders that seek to originate reverse mortgage loans shall apply by letter application to the Deputy Superintendent of Mortgage Banking for authorization to make such loans. In the absence of an adverse notice to the lender by the Department within sixty days of receipt by the Department of a letter application and accompanying documents deemed to be complete by the Department, the lender may commence originating reverse mortgage loans. This letter application shall contain the following information and documents as applicable:

(I) the name, address, telephone number, and principal place of business of the lender;

(2) the name of an executive officer responsible for the lender's reverse mortgage loan program;

(3) the basis for any exemptions from the financial requirements set forth in subdivisions (a) and (b) of this section and documentation to support such exemptions;

(4) if no exemption is claimed from subdivision (a) of this section, a copy of the standby letter of credit;

(5) if no exemption is claimed from subdivision (b) of this section, an audited financial statement for the fiscal year most recently ending;

(6) a copy of the report issued by A.M. Best Company;

(7) the designation by any out of state lender of the [superintendent] Superintendent as agent for service of process for any matter arising from a reverse mortgage loan made to a New York resident;

(8) a copy of any trust agreement entered into between the lender and a trustee pursuant to section 79.5(o) of this Part;

(9) the name, address, telephone number, and principal place of business of any trustee and a designation by any out of state trustee of the [superintendent] Superintendent as agent for service of process for any matter arising from a reverse mortgage loan made to a New York resident; and

(10) such other information and documents as shall be requested by the superintendent.

§ 79.4 Procedures

(a) All lenders must provide a toll-free telephone number and the name of a person to whom applicants and mortgagors may address questions, comments or complaints. If there is no toll free telephone number, then the lender shall accept collect calls.

(b) All lenders shall maintain their books and records relating to the making of reverse mortgage loans for a three-year period in a manner permitting inspection by the [superintendent] Superintendent. The [superintendent] Superintendent is authorized to inspect such books and records upon reasonable notice. Lenders shall bear all costs and expenses relating to such inspection.

(c) In the case of an out-of-state lender, the entity shall designate the [superintendent]

Superintendent as agent for service of process in connection with any reverse mortgage loan transaction.

(d) All lenders shall, upon request, furnish copies of its mortgage loan forms and other documents to the Department for review.

(e) No lender shall accept telephone applications, provided, however, that this shall not limit a lender's ability to solicit and accept inquiries about its products from potential borrowers.

(f) No lender shall request or accept a confession of judgment from an applicant or mortgagor(s).

§ 79.5 Requirements for 280 and 280-a loans

All 280 and 280-a loans shall comply with the following requirements:

(a) The security instrument shall expressly and conspicuously bear a legend identifying the security as a reverse mortgage.

(b) All lenders must comply with all applicable federal laws and regulations, including but not limited to the applicable sections of the Truth in Lending Act, the Equal Credit Opportunity Act and the Real Estate Settlement Procedures Act.

(c) Prior to the closing of a reverse mortgage loan, the only charge a lender may collect from an applicant(s) is an application fee which must be designated as such and which may not be a percentage of the principal amount of the loan or amount financed. The fee shall be reasonably related to the services to be performed.

(d) The maximum loan to value ratio for any loan projected at the time of loan closing shall not exceed 80 percent of the anticipated value of the property at anticipated loan maturity or at any time prior thereto. The loan to value ratio shall be calculated by dividing the numerator, as defined in paragraph (1) of this subdivision, by the denominator, as defined in paragraph (2) of this subdivision.

(1) The numerator of the ratio shall include all principal, all accrued loan interest, all fees, costs and payments incurred in connection with the origination of the loan including but not limited to charges for the purchase of annuities, the payment of real estate taxes and

insurance to the extent that an escrow account is established to fund real estate tax and insurance obligations or the lender has committed to advance funds to pay for such taxes and insurance on the property securing the reverse mortgage and any shared appreciation assuming:

(i) no early prepayment of the reverse mortgage loan;

ii) any loan amounts, such as credit lines and reserve accounts, which may be drawn at the discretion of the mortgagor(s) or by the lender are drawn fully at the earliest opportunity;

(iii) the current interest rate if fixed or, if variable, the yearly average of the base index and margin chosen by the lender for the eight year period preceding the loan closing; and

(iv) if applicable, a projected appreciation or depreciation rate for home prices which is determined by the same factor as is used in the denominator set forth in paragraph (2) of this subdivision.

(2) The denominator of the ratio shall be determined by increasing or decreasing the appraised value of the real property (as determined at loan closing by an independent certified or licensed appraiser as provided for in article 6-E of the Executive Law) by a factor that the creditor reasonably believes will be the average annual increase or decrease in the value of the real property securing the reverse mortgage loan from the loan closing until the anticipated loan maturity; provided, however, that this factor shall in no event exceed the average of the yearly changes in the Consumer Price Index for Shelter for either the Buffalo Area or New York-Northern-New Jersey-Long Island-Connecticut Area for the eight years preceding the year in which the loan is made without the [superintendent's] Superintendent's prior written approval. In determining which of the two areas to use, the lender shall use either the area in which the real property is located or the area which is closest to the real property.[1]
EXPLANATION --Matter in braces [] in this section are superscript

(3) For a term loan, the anticipated loan maturity shall be the date of maturity of the loan.

(4) For a tenure loan, the [superintendent] Superintendent may, in his or her discretion, review and approve the data and assumptions used to establish the anticipated loan maturity for each reverse mortgage loan.

(e) As an alternative to subdivision (d) of this section, the parties may agree that the total obligation of the mortgagor(s) to the lender arising from the reverse mortgage loan shall be no

greater than 80 percent of the actual value of the property at maturity. The 80 percent cap shall be exclusive of any actual losses incurred by the lender as a direct result of a breach of a loan covenant by the mortgagor(s). The difference between the principal and accrued interest and 80 percent of the actual value of the property at maturity shall be known as "equity participation".

(f) The mortgagor(s) may prepay any loan without penalty at any time. The payment of any fees or charges, such as a termination fee, that otherwise would be due at maturity without prepayment shall not be deemed a penalty for these or any other purposes.

(g) All lenders shall be prohibited from using or attaching any property or asset of the mortgagor except the real property securing the reverse mortgage loan in satisfaction of a reverse mortgage obligation.

(h) In the event that a lender fails to make or remit to the mortgagor(s) any payment required under any loan within 15 days of its due date, the lender shall forfeit twice the interest that would have been earned on the outstanding loan principal for the entire period during which payments were suspended, ceased or made late.

(i) All lenders must deliver to all applicants a statement, if available, prepared by the local or county office for the aging on the advisability and availability of independent counseling and information services. In addition, no reverse mortgage loan commitment or approval shall be issued by a lender until the applicant presents a written statement that the terms of the reverse mortgage loan have been explained by an attorney, a housing and urban development certified counselor or any other counseling service as indicated on the statement supplied by the county or local office for the aging or a signed affidavit indicating that the applicant, although made aware of the importance of counseling and its local availability through the provision of such information by the lender, chooses not to utilize any of the aforementioned available services.

(j) At the end of the term for all 280 and 280-a term loans, the mortgagor(s) may request that the real property securing the loan be reappraised to increase the payments made to the mortgagor(s) or to extend the loan term. Except for term loans insured by any agency of the State of New York, such reappraisal may be performed at the lender's sole discretion. In all cases, the lender may require the mortgagor(s) to pay the cost of such reappraisal in advance. In the event the value of the property has increased, the lender may increase the loan payments or extend the loan term (and, for term loans insured by any agency of the State of

New York, must increase the loan payment(s) or extend the loan term), subject to the following:

(1) The loan-to-value ratio limitations, as determined pursuant to this Part as of the date on which the increase or extension would begin, shall not be exceeded.

(2) Any existing insurance coverage shall be increased to insure the additional amounts to be due.

(3) The mortgagor(s) shall execute all documents reasonably requested by the lender and pay all reasonable fees and costs associated with the increase in payments or the extension of the loan term provided that such fees and costs have been previously disclosed in writing to the mortgagor(s).

(k) The lender and the mortgagor(s) may agree to establish a reserve account which may be drawn upon by the mortgagor(s) or the mortgagee to maintain the structural integrity of the real property subject to Section 79.8 of this Part, to pay real estate taxes or the premium on any required insurance subject to Section 79.14 of this Part or for any personal expenses of the mortgagor(s). The reserve account may bear interest at a rate that is different from the interest rate on other advances made pursuant to the terms of the reverse mortgage. A lender may only charge interest on advances actually made from the reserve account and not on the entire balance in the reserve account.

(l) The security agreement must include the following

(1) a list of termination events; and

(2) the lender's obligation to notify the mortgagor(s) in writing of any event that could lead to termination pursuant to Sections 79.9(4) and (6) of this Part; and

(3) the name of a third-party, if any, chosen by the mortgagor(s) to whom the lender is obligated to send written notice of any event that could lead to termination pursuant to Sections 79.9(4) and 79.9(6).

(m) The lender shall also provide a copy of all foreclosure documents served on the mortgagor(s) to such third party designated in the security agreement simultaneously with service on the mortgagor(s) or notify the local or county office for the aging of its intent to commence foreclosure proceedings if the mortgagor has not named a third-party.

(n) Interest shall only accrue from the time monies are advanced to or on behalf of the mortgagor(s). Accrued interest may be added to the loan principal.

(o) A reverse mortgage loan which provides for the purchase of an annuity shall comply with the following conditions as applicable:

(1) the company that issues the annuity must have a rating of excellent or superior from A.M. Best Company and must be licensed by the State of New York; and

(2) if a trustee holds the annuity in trust during the life of the mortgagor(s), then:

(i) the trustee must be a banking organization or an insurance company which is incorporated, chartered, organized or licensed under the laws of this State or any other state or the United States;

(ii) any out of state trustee must appoint the [superintendent] Superintendent as agent for service of process for any matter arising from a reverse mortgage loan made to a New York resident;

(iii) the trust agreement must provide that it is governed by New York law;

(iv) payments derived from the annuity must be paid by the trustee directly to the mortgagor(s) irrespective of whether the payment is made on behalf of the lender or investor; and

(v) the mortgagor(s) must have a beneficial interest in the trust irrespective of whether the lender or investor also has a beneficial interest in the trust.

§ 79.6 Additional features of 280 loans

(a) The lender may maintain an escrow account for purposes of paying real estate taxes and insurance on the real property securing the loan.

(b) The security agreement may provide that the lender receive a percentage of the future appreciation of the real property securing the loan, i.e., "shared appreciation", in addition to or in lieu of fixed or variable rate interest. Such appreciation shall not be considered interest for purposes of any law regulating the maximum rate of interest which may be charged, taken or received, including pursuant to sections 190.40 and 190.42 of the Penal Law. Loans which contain "equity participation" as provided for in Section 79.5(e) of this Part may not provide for any other forms of equity sharing or shared appreciation.

(c) The lender may require the mortgagor(s) to obtain mortgage insurance for the principal and any accrued but unpaid interest which insurance shall run to the mortgagee as beneficiary.

§ 79.7 Additional features of 280-a loans

(a) The lender shall maintain an escrow account for purposes of paying real estate taxes and insurance on the real property securing the loan during the time period during which payments are made to the mortgagor(s).

(b) All mortgagor(s) shall retain the right to lifetime possession of the real property which serves as security for the loan, as long as such real property remains the mortgagor(s)' principal residence and subject to Section 79.9 of this Part.

(c) A lender may, at its option, for the period of time commencing at the end of the loan term, or ten years after the reverse mortgage loan commences, whichever occurs first, and ending at such time as the reverse mortgage loan is paid in full, receive no more than 20 percent of the future appreciation of the property securing the loan, i.e., "shared appreciation", or charge a fixed rate of interest on the outstanding balance of monies advanced under the loan or any combination thereof. Such appreciation shall not be considered interest for purposes of any law regulating the maximum rate of interest which may be charged, taken or received, including pursuant to Sections 190.40 and 190.42 of the Penal Law. Loans which contain "equity participation" as provided for in section 79.5(e) of this Part may not provide for any other forms of equity sharing or shared appreciation.

(d) The mortgagor(s) shall maintain mortgage insurance for the principal and any accrued but unpaid interest which insurance shall name the mortgagee as beneficiary. This requirement shall not apply to any loan which is sold into the secondary market provided that the lender shall obtain a written commitment to purchase such loan from the investor prior to the loan closing and shall arrange for the delivery of the loan to the investor within 10 days of the loan closing.

(e) Prior to offering reverse mortgage loans, all lenders must prepare a form entitled "Lender's Limited Waiver of the Right of Foreclosure" for review and approval by the Superintendent. This document shall set forth the termination events, as applicable, pursuant to Section 79.9 of this Part and shall be executed by the lender in connection with the closing of every 280-a loan. The lender shall furnish a copy of the executed form to every mortgagor(s) at closing and shall keep the original form on file for the life of the loan.

§ 79.8 Maintenance of real property securing reverse mortgage loans

(a) Mortgagor(s) shall be required to maintain the structural integrity of the real property securing the reverse mortgage loan in the same condition as the property is in at the time of closing or after repairs have been made for which funds have been disbursed or set aside at closing for later disbursement. For purposes of this section, repairs necessary to maintain the structural integrity shall be limited to repairing structural problems threatening the continued viability of the structure as a residential unit and those matters which, without repair, will threaten to materially damage the property or its market value.

(b) If the mortgagor(s) fails to make a repair required to maintain the structural integrity of the real property in a timely manner, the lender may arrange for such repair and pay for it in the following ways:

(1) by deducting necessary amounts from a reserve fund;

(2) by withholding from one or more monthly payments otherwise due to the mortgagor(s) no more than 25 percent of each such monthly payment; or

(3) by adding the amount to the loan principal.

If a reserve fund has been established, then, to the extent possible, the lender must deduct the cost of the repair from such fund before choosing option (2) or (3) of this subdivision. If a reserve fund has not been established, then the lender may choose whether to proceed according to option (2) or (3) of this subdivision or a combination thereof. (c) Prior to making or charging the mortgagor(s) for a repair necessary to maintain the structural integrity of the real property, the lender shall notify the mortgagor(s) of the problem and, and unless a threat of imminent danger to life or property exists, provide the mortgagor(s) ninety days to make the repairs. If the repairs are not completed by the mortgagor(s) in a satisfactory manner prior to the end of the appropriate period, the lender may take such steps as it views reasonably necessary to maintain the structural integrity of the real property and charge the mortgagor(s) for all reasonable expenses. If an imminent danger to life or property exists, the lender may proceed to remedy the structural integrity of the real property on as little as 48 hours notice to the mortgagor(s).

(d) The lender shall have the right to inspect the real property securing the loan on 72 hours notice but not more often than is reasonably necessary to assure the continued structural integrity of the real property.

§ 79.9 Termination of 280 and 280-a loans

(a) 280 and 280-a loans may be terminated by the lender solely in the event of any of the following:

(1) the sale, conveyance, transfer or assignment of any part of the real property securing the loan or any of the mortgagor's rights in the real property, whether voluntarily or involuntarily, or by operation of law;

(2) the mortgagor(s)' death, or if there is more than one mortgagor, then the death of the last living mortgagor;

(3) the mortgagor(s) ceases to use the real property as his or her principal place of residence defined as living and sleeping quarters for 90 consecutive days in any 365 day period without notifying the lender and making arrangements satisfactory to the lender for the maintenance of the real property and the anticipated return of the mortgagor(s).

The lender's consent to the arrangements made pursuant to this paragraph shall not be unreasonably withheld;

(4) the mortgagor(s) ceases to use the real property as his or her principal place of residence defined as living and sleeping quarters in excess of 180 days in any 365 day period; and

(5) the mortgagor(s) fails to pay real estate taxes or maintain all insurance required pursuant to the security agreement.

(i) If the mortgagor(s) fails to pay taxes or maintain all required insurance, then the lender must within 10 business days of learning of such event, give written notice of such failure to the mortgagor(s) and the third-party, if any, designated by the mortgagor(s) to receive notice of any event that could lead to termination. The lender must give the mortgagor(s) thirty 30 calendar days to cure such failure. In addition, the notice to the mortgagor(s) and the third-party must advise the mortgagor(s) of his or her right to cure.

(ii) The failure to pay taxes or maintain all required insurance shall not be construed to be a termination event unless the lender has complied with the provisions set forth in subparagraph (i) of this paragraph.

(6) the mortgagor(s)

(i) filing a voluntary petition in bankruptcy or effecting a plan or other arrangement with creditors under court supervision;

(ii) having an involuntary petition in bankruptcy filed against the mortgagor that is not discharged within 90 days after it is filed;

(iii) applying for or permitting the appointment of a receiver, trustee or custodian for the real property securing the loan which is not discharged within 90 days after the date of appointment; provided, however, that the appointment of a conservator, guardian, committee or other fiduciary of the person to act on the mortgagor(s)' behalf in connection with a determination by a court that the mortgagor(s) is incompetent will not terminate the loan.

(7) the mortgagor(s) fails to maintain the structural integrity of the real property, as that term is defined in Section 79.8 of this Part.

(b) For a 280 loan, if applicable, the expiration of the term may also terminate the reverse mortgage loan.

(c) The mortgagor(s) or his or her estate shall notify the lender, in writing, immediately upon the occurrence of any event listed in subdivision (a) of this section.

§ 79.10 Permitted fees, costs and payments

(a) Other than principal, interest, shared appreciation and equity participation, lenders may charge, in connection with the origination of reverse mortgage loans, the following fees, costs and payments, as applicable, at closing, and none other, provided that the lender has disclosed them pursuant to Section 79.11 of this Part and provided further that the costs or payments are actually paid by the lender to a third-party provider:

(1) an application fee, which may be collected prior to closing, as limited by the provisions of Section 79.5(c) of this Part;

(2) a loan origination fee;

(3) the cost of document preparation which is reasonably related to the services provided;

(4) the cost of appraising or surveying the property;

(5) the cost of a title examination, an abstract of title or title insurance;

(6) the cost of a tax search for tax liens existing at the time of closing if such search is not included in the title examination;

(7) the payment to discharge any existing liens on the real property securing the loan;

(8) the cost of recording the reverse mortgage loan;

(9) the cost of actual attorney's fees charged to the lender in connection with the closing of such loan;

(10) the cost of a credit report;

(11) the cost of a flood zone search;

(12) the cost of an inspection to be paid in connection with the origination of the loan but not subsequent to the loan closing;

(13) the payment to purchase an annuity;

(14) the payment for any repairs contracted for at or before the loan closing irrespective of whether such repairs are completed at time of closing and/or whether the funds are held in escrow;

(15) a one-time payment for a tax reporting service;

(16) the cost of purchasing mortgage insurance;

(17) the payment of real estate taxes and property insurance; and

(18) the cost of mortgage brokerage services, not to exceed three points based on the value of the real property securing the reverse mortgage loan at the time of loan closing, as such service is defined in Part 38 of this Title and which service is rendered by an entity authorized by Article 12-D of the Banking Law.

(b) During the life of the loan, lenders may charge the following fees or require the mortgagor(s) to incur the following costs or payments:

(1) the cost of purchasing additional mortgage insurance;

(2) the costs to maintain the structural integrity of the real property securing the loan in accordance with Section 79.8 of this Part;

(3) the costs of any appraisal for the refinancing or extension of the loan in accordance with Section 79.5(i) of this Part;

(4) the payment of real estate taxes and property insurance; an

(5) a monthly servicing fee of not more than $ 30.00.

(c) At termination of the loan, lenders may charge a termination or maturity fee which shall be the actual cost of arranging for the sale or foreclosure of the real property securing the loan. Such fee may include actual broker's fees, advertising costs, moving and/or storage costs and legal and other fees representing actual fees or costs charged to the lender.

(d) Lenders may not charge any fees for the establishment, maintenance or termination of an escrow account with respect to any reverse mortgage loan.

§ 79.11 Required disclosures for 280 and 280-a loans

(a) Prior to accepting an application for any loan, but in any event prior to a lender accepting an application fee, a lender must disclose to each loan applicant the following information, as is relevant to the type of loan being offered:

(1)The following notice, or a notice to like effect: YOU SHOULD CONSULT YOUR TAX, LEGAL OR FINANCIAL ADVISERS OR CONSULT WITH APPROPRIATE AUTHORITIES REGARDING ENTITLEMENTS AND TAX AND ESTATE PLANNING CONSEQUENCES OF A REVERSE MORTGAGE LOAN. YOU MAY CONTACT THE AREA AGENCY ON AGING (INSERT TELEPHONE NUMBER) FOR NAMES OF ADVISORS OR CONSULTANTS AVAILABLE IN YOUR COMMUNITY.

In addition, where available, the lender shall furnish the applicant with a statement prepared by the local or county office for the aging of the locality or county where the mortgagor(s) reside concerning the availability and advisability of independent counseling and information services.

(2) The lender's toll-free telephone number and the name of a person to whom applicants and mortgagors may address questions, comments or complaints. If there is no toll-free telephone number, the lender must disclose that it will accept collect calls.

(3) A notice that the mortgagor(s) or applicant can submit written complaints to the New York State Department of Financial Services, Mortgage Banking Division, at the address set forth in section 1.1 of Supervisory Policy G 1.

(4) The events which would terminate or accelerate the loan and an explicit warning, if applicable, that the mortgagor(s) may be compelled to move out of his or her home at the expiration of the loan term.

(5) If applicable, that the loan provides for the lender to receive a percentage of the future appreciated value of the property, i.e., "shared appreciation", what that percentage is, and the lender's method of calculating such amount. In addition, the lender shall provide both a narrative explanation and an example of the application of its methodology. This example must use as its projected real estate appreciation or depreciation rate for home prices the average of the yearly changes in the Consumer Price Index for Shelter for either the Buffalo Area or the New York-Northern New Jersey-Long Island-Connecticut Area for the eight years preceding the year in which the loan is made.

(6) Interest accrues from the time monies are advanced to or on behalf of the mortgagor(s) and whether accrued interest is added to the loan principal.

(7) The only asset of the mortgagor(s) which may be used by the lender to satisfy the loan is the real property securing the loan and any limitation thereon as may be provided for in section 79.5(e) of this Part.

(8) The loan may be prepaid at any time without penalty. The lender must specify how the value of the home at the time of prepayment will be determined and the method by which the then outstanding loan balance will be prepaid.

(9) All fees, costs and payments to be paid by the mortgagor(s) and whether the application fee is non-refundable.

(10) The mortgagor(s)' right to designate a third party whom the lender would notify in writing of any event that could lead to termination of the loan and to whom the lender must furnish a copy of any foreclosure documents.

(11) A description of any conditions or limitations in connection with the refinancing or extension of any loan, and if applicable, the mortgagor(s)' right to refinance or extend the loan.

(12) The interest rate(s) to be charged on the outstanding principal under any loan and whether the rate(s) are fixed, variable or both. In addition, in a term loan with a fixed rate of interest, the lender shall disclose the total interest payable on the loan principal, assuming maturity of the loan at expiration of the term. In a term loan with a variable rate of interest, the lender shall disclose the estimated total interest payable on the loan principal using the yearly average of the base index and margin chosen by the lender for the eight year period preceding the loan closing and assuming the maturity of the loan at expiration of the term. For tenure

reverse mortgage loans, the same disclosures shall be made, except that maturity shall be assumed at the actuarial life expectancy of the mortgagor, or, if there is more than one mortgagor, the younger of the mortgagors.

(13) If the lender is an entity identified in section 79.3 of this Part, the following notice, or a notice to like effect: THE LENDER MAKING THIS REVERSE MORTGAGE LOAN IS IN COMPLIANCE WITH THE CRITERIA ESTABLISHED BY THE NEW YORK SUPERINTENDENT OF FINANCIAL SERVICES FOR THE MAKING OF SUCH LOANS.

(14) If applicable, the availability of an annuity, whether an annuity will be required, and if there is an annuity, then when the annuity payments will commence, who will own the annuity and the affiliation, if any, between the lender and the company from which the annuity is purchased.

(15) Whether an escrow account will be established, for what purposes and when the account will be terminated.

(16) Whether a reserve fund will be established and for what purposes.

(17) Whether and what type(s) of insurance will be required and the cost of any premiums.

(18) Whether the mortgage broker or any entity acting in a mortgage brokerage capacity, as a general business practice, utilizes the services of two or fewer lenders, and if so, the name(s) of the lender(s).

(19) If applicable, that the loan provides for the lender to receive "equity participation", the maximum total percentage obligation of the mortgagor(s) to the lender arising from the reverse mortgage loan, what is included and what is excluded from it. In addition, the lender shall provide both a narrative explanation and an example demonstrating equity participation.

(20) Such additional information as the lender believes appropriate, as long as such information is complete, accurate and not misleading.

(b) Items (1) through (3) (paragraphs (a)(1)-(3) of this section) must be furnished to the mortgagor(s) on a separate sheet. Items (4) through (6) (paragraphs (a)(4)-(6) of this section) must be furnished to the mortgagor(s) on a separate sheet and in bold type.

(c) Prior to an applicant's receiving counseling pursuant to Section 79.5(i) of this Part, if available, the lender shall furnish for term loans, a schedule of estimated payments to the mortgagor(s) and the total payment in dollars over the term of the loan. For tenure loans, a

schedule of estimated payments to the mortgagor(s) shall be furnished. The lender shall label such schedules as "estimates". If counseling is not available, the lender shall make the foregoing disclosure prior to or simultaneously with the approval of the application.

(d) Six months prior to the end of a term loan, the lender shall disclose, in writing, if applicable:

(1) that the mortgagor(s) will be responsible to make real estate tax and insurance payments; and

(2) that the mortgagor(s) will have to vacate his or her home upon the expiration of the term and the exact date that such move-out is required.

§ 79.12 Availability of 280 and 280-a loans

(a) Commencing January l, 1995, a lender shall make at least as many 280-a loans as it makes 280 loans per calendar year. However, a lender need not do so to the extent that it determines that there are no or insufficient applications for 280-a loans, the individuals who apply for 280-a loans do not qualify for such loans, or mortgage insurance for the principal and any accrued but unpaid interest for 280-a loans is not available for the type of reverse mortgage loan made by the lender through the private market or any agency of the State of New York. Such determination shall be subject to review by the [superintendent] Superintendent at his or her discretion.

(b) A lender shall:

(1) advertise its 280-a loan programs to the same extent as it advertises its 280 loan programs in all the counties in which the lender makes 280 loans; and

(2) ensure that all advertising materials, including brochures, for any reverse mortgage loans designed specifically for New York residents mention both the lender's 280-a and 280 loans and prominently display or state the lender's name; and

(3) make its promotional materials on its 280-a loans available to the local and county offices for the aging and the New York State Office for the Aging, to the extent reasonably requested by them, in all counties in which the lender makes 280 loans; and

(4) require its loan officers to inform applicants for 280 loans of the lender's 280-a loan programs.

(c) All lenders shall maintain copies of all advertising and promotional materials for all reverse mortgage loans for a period of three years commencing from the first date that the material was used to solicit reverse mortgage loans.

(d) All lenders must maintain an application log for all applications. In addition, the lender must maintain rejected mortgage application files for a minimum of three years.

(e) Any lender may, at its option, offer only one reverse mortgage loan program provided such program meets the requirements of a 280-a loan.

(f) Loans made pursuant to 12 USC §1715z-20 do not fulfill the requirement that a lender shall make at least as many 280-a loans as it makes 280 loans unless the loan would otherwise qualify in all respects as a 280-a loan.

§ 79.13 Administrative penalties

(a) Any lender may be subject to disciplinary action as may be determined to be appropriate by the [superintendent] Superintendent for engaging in a pattern of conduct that demonstrates the lender's incompetence or untrustworthiness. Such conduct includes but is not limited to a pattern of unjustified late payments, the failure to provide proper disclosures, the receipt of unauthorized fees, the failure to maintain the required line of credit, any violation of the procedures set forth above and the failure to perform all required duties in an honest, fair and reasonable manner.

(b) Prior to revoking a lender's license, charter or approval to make reverse mortgage loans pursuant to Section 79.3 of this Part or imposing any fine, the [superintendent] Superintendent shall hold an administrative hearing in accordance with Supervisory Policy and Procedure G 111 of this Title.

§ 79.14 Special provisions regarding payment of real estate taxes and insurance

(a) Mortgagor(s) shall have the right to choose a property insurer(s) subject to the lender's consent which shall not be unreasonably withheld. If the mortgagor(s) fails to choose a property insurer(s) in a timely manner or if the insurer(s) is not acceptable to the lender, then the lender may insure the property with a carrier(s) of its choice.

(b) If there is no escrow account, then the lender may advance the funds necessary to pay for such coverage or to pay real estate taxes and to reimburse itself in the following ways:

(1) by deducting necessary amounts from a reserve fund;

(2) by withholding from one or more monthly payments otherwise due to the mortgagor(s) no more than 25 percent of each such monthly payment; or

(3) by adding the amount to the loan principal.

If a reserve fund has been established, then, to the extent possible, the lender must reimburse itself from such fund before choosing option (2) or (3) (paragraph (2) or (3) of this subdivision. If a reserve fund has not been established, then the lender may choose whether to proceed according to option (2) or (3) (paragraph (2) or (3) of this subdivision) or a combination thereof.

§ 79.15 Policies and procedures

The board of directors or trustees of every State-charted bank, trust company, savings bank, savings and loan association, or credit union and the appropriate officers of a foreign bank maintaining an insured branch in this State which shall engage in the business of making reverse mortgage loans shall adopt such policies and procedures as are necessary to safely conduct such business and to establish, monitor and periodically reevaluate appropriate limitations on the institution's aggregate reverse mortgage loan portfolio. Such policies and procedures shall be consistent with safe and sound banking practices and shall take into account the banking institution's size and financial condition, local economic conditions, the availability of insurance for the portfolio or any portion thereof and any other factors that the institution deems relevant. Such policies and procedures shall be subject to the superintendent's periodic review upon examination.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 80

INVESTMENT IN JUNIOR LIEN MORTGAGE LOANS BY COMMERCIAL BANKS, SAVINGS BANKS, CREDIT UNIONS, MORTGAGE BANKERS AND SAVINGS AND LOAN ASSOCIATIONS

(Statutory authority: Banking Law, §§ 14[1], 103[4-a], 235[6-a], 380[4-a], 454[11], 590a)

Sec.

80.1 Definitions

80.2 General authority

80.3 Maximum amount

80.4 Disclosure

80.5 Notification

80.6 Adjustments to rate, payment, balance or term

80.7 Appraisal

80.8 Rate of interest and permitted charged

80.9 Prohibited clauses

80.10 Revolving credit accounts

80.11 Bridge loans

80.12 Compliance with Federal regulation

§ 80.1 Definitions

For purposes of this Part:

(a) The term lender shall mean a bank, trust company, savings bank, savings and loan association, credit union, mortgage bankers or exempt organization as defined in section 590 of the Banking Law.

(b) The term natural person shall mean an individual.

(c) The term junior mortgage loan shall mean a loan or other extension of credit to a natural person secured by:

(1) a mortgage on real property which is:

(i) improved by a one-to-four-family owner-occupied residence;

(ii) subject to the lien of one or more prior mortgages or similar recorded encumbrances; or

(2) a junior interest in or junior lien on certificates of stock or other evidences of an ownership interest in, and a proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of residential real estate.

(d) The term electronically transmitted or electronic media shall mean any transmission via diskette, wire or tape including but not limited to the Intranet (interactive or otherwise), the Internet, any other computer network, electronic mail, or any other similar method of transmission.

§ 80.2 General authority

(a) A lender is authorized to make junior mortgage loans in accordance with the provisions of this Part. However, junior mortgage loans which equal or exceed $ 250,000 when combined with the outstanding unpaid principal balance on existing loans secured by the type of security described in section 80.1(c) of this Part at the time such junior mortgage loan is made, shall be exempt from the provisions of this Part. Except as provided herein, nothing in this Part shall be deemed to limit the authority which a lender may otherwise have under any other provision of law, including sections 103(4-a), 235(6-a), 454(16) and 380(4-a) of the Banking Law to make junior mortgage loans in accordance with such provisions whether or not such loans are secured by one-to-four-family owner-occupied residences. A junior mortgage loan, including a revolving credit line as authorized by section 80.10 of this Part, shall be repayable in monthly installments, which may be installments of interest only, and may be structured as a fixed-rate mortgage, a wrap-around mortgage or any type of adjustable rate or other mortgage form as agreed to by the lender and the borrower, unless specifically prohibited by this Part or by section 82.1(b) or 82.2(b) of this Title.

(b) Balloon payment mortgages shall be for a term of not less than three (3) years.

(c) Electronic disclosures and notifications are permitted as set forth in this Part.

§ 80.3 Maximum amount

Every lender which engages in the business of making junior lien mortgage loans shall adopt policies and procedures as are appropriate with respect to the maximum amount which, when added to the aggregate amount unpaid upon all prior mortgages, liens, and other encumbrances of record upon the real property or shares (in the case of a cooperative apartment unit), the lender shall advance pursuant to a junior mortgage loan. Such policies and procedures shall be subject to the [superintendent's] Superintendent's periodic review.

§ 80.4 Disclosure

(a) Prior to accepting an application for a loan, a lender must disclose in writing or via electronic media to each loan applicant, in one or more documents, and in plain language, the terms of the type(s) of loan(s) sought by the applicant. The disclosure statement provided to an applicant shall include at least such of the following information as is relevant to the type of loan being offered:

(1) the term to maturity;

(2) the initial interest rate, if known, or the manner in which the initial interest rate will be established;

(3) the amount of the initial payment, if known, and an explanation of the lender's amortization schedule for the loan, including how the lender determines both the amount of each payment and the proportion of each payment which will be credited to interest;

(4) a full explanation of how the interest rate, the payment, the loan balance, or the term to maturity may be adjusted (including identification of the index/indices to be used and how index values may be obtained by the borrower), and how the adjustment of one may affect the others including disclosure of the intervals at which the lender may change the rate on the loan, the time(s) or date(s) at which the lender calculates the rate with respect to the index/indices, and any conditions or events on which the changes in rate are contingent;

(5) the fact that the borrower will receive notification in writing or via electronic media from the lender of increases in the rate or changes in the term of payment, and what

information will be contained in each notice of an adjustment and, in the case of a nonamortizing or partially amortizing loan, in the notice of maturity, and how far in advance of an adjustment or maturity each notice will be provided;

(6) where a valid prepayment penalty will be provided for in the loan contract, a description of such penalty;

(7) if the loan contract will provide for escrow payments, a statement of that fact and an explanation of the purpose of requiring escrow payments and how the amount of such payments is established;

(8) a hypothetical example, illustrative of the type of credit being offered, of the effect or the combination of effects that an increase in the rate on the loan may have on the amount of the monthly payment, or the number of monthly payments or the amount of the final payment; and

(9) the history of the movements in the index chosen for the loan, including the highest and lowest interest rates reached by the index, and the dates at which these levels were reached, for each of the three calendar years preceding the year in which the loan is made, provided further that if a loan is made after August 31st of any calendar year, the disclosures shall include the high and low figures for the index's performance through June 30th of that year and such disclosure may be used as the disclosure of the high and low in index performance for the calendar year next preceding the calendar year in which the loan is made for any loan made prior to March 1st of a calendar year.

If an application is accepted by telephone, the lender shall mail, deliver or transmit by electronic media the required disclosure statement within three business days.

(b) In the case of a balloon-payment mortgage loan, the disclosure required to be given pursuant to subdivision (a) of this section shall include the following notice, or a notice to like effect, as applicable, which notice may be given in writing or via electronic media and which shall also be included in the loan contract:

> THE TERM OF THE LOAN IS _____ YEARS. AS A RESULT, YOU WILL BE REQUIRED TO REPAY THE ENTIRE PRINCIPAL BALANCE AND ANY ACCRUED INTEREST THEN OWING _____ YEARS FROM THE DATE ON WHICH THE LOAN IS MADE.
>
> THE LENDER HAS NO OBLIGATION TO REFINANCE THIS LOAN AT THE END OF ITS TERM. THEREFORE, YOU MAY BE REQUIRED TO REPAY THE LOAN OUT OF ASSETS YOU OWN OR YOU MAY HAVE TO FIND ANOTHER LENDER WILLING TO REFINANCE THE LOAN. ASSUMING THIS LENDER OR ANOTHER LENDER REFINANCES THIS LOAN AT MATURI-TY,

YOU WILL PROBABLY BE CHARGED INTEREST AT MARKET RATES PREVAILING AT THAT TIME AND SUCH RATES MAY BE HIGHER THAN THE INTEREST RATE ON THIS LOAN. YOU MAY ALSO HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW MORTGAGE LOAN.

If the lender guarantees refinancing of the loan for additional terms until the principal balance has been repaid but does not provide for the recalculation of the interest rate at the time of each refinancing according to a prespecified index, the disclosures and the loan contracts shall include the following notice, or a notice to like effect, as applicable, which notice may be given in writing or via electronic media:

THE TERM OF THE LOAN IS _____ YEARS. AT MATURITY, _____ YEARS FROM THE DATE ON WHICH THE LOAN IS MADE, AND AT THE TIME OF EACH FURTHER REFINANCING, THE LOAN WILL BE REFINANCED AT AN INTEREST RATE ESTABLISHED BY THE LENDER WITH REFERENCE TO MARKET RATES. SUCH INTEREST RATE(S) MAY BE HIGHER THAN THE INTEREST RATE PAID ON THIS LOAN.

In addition, at the time it commits itself to make the loan, the lender must inform the applicant in writing or via electronic media of the principal balance which will be due at maturity of the loan or the initial term of the loan (assuming all scheduled principal payments, if any, are made in accordance with the loan contract) and the fact that the borrower will receive notice of maturity in writing or, where the borrower has consented in advance, via electronic media from the lender and the time periods within which such notice will be sent.

(c) The lender shall include in the disclosures a statement, in bold face type at least ten point in size, as follows:

YOU SHOULD CHECK WITH YOUR LEGAL ADVISOR AND WITH OTHER MORTGAGE LIEN HOLDERS AS TO WHETHER ANY PRIOR LIENS CONTAIN ACCELERATION CLAUSES WHICH WOULD BE ACTIVATED BY A JUNIOR ENCUMBRANCE.

(d) With regard to the electronic transmission of disclosures, a hardcopy of such disclosure shall be mailed to each applicant who indicates that he or she does not have the computer capacity to down-load and print such disclosure. In those instances in which a hard-copy of the disclosure is not mailed to the applicant, the lender must be able to demonstrate that information was obtained as to the applicant's computer capacity to down-load and print such disclosure.

§ 80.5 Notification

(a) At least 30 but not more than 120 days prior to a payment adjustment and at least 90 but not more than 120 days prior to the expected maturity of a balloon-payment mortgage, a lender shall provide the borrower with notice in writing or, where the borrower has consented in advance, via electronic media of the adjustment or of maturity. However, where the loan contract provides that changes in the interest rate shall occur more frequently than changes in the payment, the lender need not notify the borrower of changes in the rate, nor of changes in the loan balance or term resulting from a rate change, until notice of a payment adjustment is given. (For purposes of notification, either in writing or, where the borrower has consented in advance, via electronic media, a payment adjustment is considered to occur as of the date of the interest-rate change immediately preceding the due date of the adjusted payment.) In addition, where the loan contract sets out a schedule of payment adjustments, notice need not be given of payment changes made pursuant to that schedule.

(b) In the case of a revolving credit line secured by a junior mortgage, written or, where the borrower has consented in advance, electronic notification of payment changes need only be given at the time the adjusted payment is due.

(c) With regard to the electronic transmission of notices, a hard-copy of such notice shall be mailed to each applicant who indicates that he or she does not have the computer capacity to down-load and print such notice. In those instances in which a hard-copy of the notice is not mailed to the applicant, the lender must be able to demonstrate that information was obtained as to the applicant's computer capacity to down-load and print such notice.

§ 80.6 Adjustments to rate, payment, balance or term

Except for such further limitations on adjustments (i.e., "ceilings", "floors" or "initial discounts") as may be set forth in the loan contract:

(a)(1) adjustments to the interest rate shall correspond directly to the movement of an interest-rate index or of an index that measures the rate of inflation, which index is readily available to and verifiable by the borrower and is beyond the control of the lender; provided that a lender may decrease the interest rate at any time, and provided further, that interest rate adjustments may be rounded to the nearest fraction of a percentage point when so stated in the contract. A lender may also increase the interest rate pursuant to a formula or schedule that specifies the amount of the increase, the time at which it may be made, and which is set forth in the loan contract;

(2) adjustments to the monthly payment and loan balance may be made to reflect interest-rate adjustments and, in the case of a payment adjustment, where the adjustment reflects change in the loan balance or is made pursuant to a formula or a schedule specifying the percentage or dollar change in the payment, as set forth in the contract;

(3) any combination of indices or a moving average of index values may be used as an index, but a lender may not change or reserve the right to change the index or indices specified in the loan contract unless the initial index or indices specified become(s) unavailable during the term of the loan; and

(4) the loan term may be adjusted only to reflect a change in the interest rate, the payment or the loan balance.

(b) Mortgage bankers.

(1) Mortgage bankers may use any single index from among the indices approved by the Superintendent [of Banks] Pursuant to Regulations, Part 334, on such terms as stated therein. Adjustments in the rate for the loan shall correspond directly to the movements of the index. As provided in section 590-a(3) of the Banking Law, the interest rate of the junior mortgage loan must be reduced in proportion to any decrease in the index rate, while increases in the interest rate based upon changes in the index rate may be made at the option of the mortgage banker. Although any loan may only use a single index for the life of the loan, the mortgage banker may provide for the use of an index similar to the index actually used in the event that the latter index should become unavailable for use during the term of the loan.

(2) The loan contract may provide for payment adjustments to be made pursuant to a formula or schedule specifying the percentage or dollar change in the payments. The loan term may be adjusted only to reflect a change in the interest rate and adjustments to the payment.

§ 80.7 Appraisal

No junior mortgage loan shall be made except upon a written and signed certificate which states that the property securing such loan has been examined and which appraises the value of such property. For mortgage loans in an amount greater than $ 250,000, the appraised value shall be determined by an appraiser licensed or certified or working under the supervision of an appraiser who is licensed pursuant to Article 6-E of the Executive Law.

§ 80.8 Rate of interest and permitted charges

The rate or rates of interest that a lender may take or receive on a junior mortgage loan shall be the rate or rates agreed upon by the lender and the borrower. Such interest may be charged

relative to unpaid principal balances or may be precomputed; provided that if a precomputed junior mortgage loan is repaid prior to maturity for any reason, any unearned interest shall be refunded according to the actuarial method based on scheduled remaining balances. The unpaid principal balance may include items listed in subdivisions (a)-(u) of this section. No fee, commission, expense or other charge to the borrower in addition to the interest charge provided for in this section shall be taken, received, reserved or contracted for by a lender in connection with the making or maintenance of a junior mortgage loan, except where applicable, to the extent not otherwise inconsistent with any other provision of law:

(a) a loan origination fee, commitment fee or similar charge;

(b) a fee or charge for appraising or surveying the property securing such junior mortgage loan;

(c) fees or premiums for a title examination, an abstract of title, title insurance or similar purposes, a credit report fee and a fee taken at closing for a search for tax liens existing at the time of closing if such search is not included in the title examination provided such fees or premiums actually will be paid by the lender;

(d) fees or charges prescribed by law which actually are or will be paid by the lender to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the junior mortgage loan;

(e) fees or charges which actually are or will be paid by the lender for any transfer, mortgage recording or related tax;

(f) reasonable attorney's fees representing actual fees charged to the lender in connection with the closing of such junior mortgage loan;

(g) charges for credit life, credit accident and health insurance, credit unemployment insurance and mortgage guaranty insurance;

(h) reasonable attorney's fees not in excess of 15 percent of the unpaid debt in the event of default if such junior mortgage loan is referred to an attorney who is not a salaried employee of the lender for collection;

(i) a late charge on any payment that is due and unpaid;

(j) fees or charges for processing stop payment orders;

(k) fees or charges for handling checks drawn on insufficient funds in accordance with the provisions of section 5-328 of the General Obligations Law;

(l) fees or charges for replacing lost or stolen checks;

(m) fees or charges for printing checks;

(n) fees or charges for converting, at the borrower's request, all or part of a loan to a closed-end fixed or variable rate term loan;

(o) fees or charges for reducing the interest rate on existing junior lien loans or for any other loan modification requested by the borrower;

(p) fees or charges taken at closing for a flood zone search;

(q) an annual fee;

(r) an application fee and/or processing fee each in an amount reasonably related to the services to be performed on behalf of the applicant, which fee shall not be figured as a percentage of the principal amount of the loan, credit line or amount financed;

(s) fees or charges for dishonoring a check(s) that cannot be approved since the borrower is in violation of the terms of the agreement or where payment of such a check(s) would cause the borrower to be in violation of the terms of the agreement, but not more than once in a monthly billing cycle;

(t) an overlimit fee or charge which may be imposed whenever the specified credit limit is exceeded, but not more than once in a monthly billing cycle; and

(u) such other fees or charges as may be specifically authorized by rule or regulation.

The fees and/or charges permitted in subdivisions (j), (l), (m), (q), (s) and (t) of this section are permitted only in connection with a revolving credit account.

§ 80.9 Prohibited clauses

A contract, note or instrument evidencing or securing a junior mortgage loan shall not contain:

(a) any acceleration clause providing that the junior mortgage loan may be declared due and payable upon the mere condition that the lender deems itself insecure with respect to the unpaid balance of such junior mortgage loan;

(b) any power of attorney to confess judgment or any other power of attorney;

(c) any provision whereby the borrower waives any rights accruing to him under the provisions of this Part;

(d) any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned;

(e) any provision prohibiting prepayment of the junior mortgage loan in whole or in part or imposing a penalty, except as otherwise permitted by section 5-501(3)(b) of the General Obligations Law, and then only if according to the provisions of the note and mortgage, the interest rate for the loan shall remain fixed for a period of at least five years, the mortgage broker, mortgage banker and/or exempt organization complies with the provisions of sections 38.2, 38.3 and 38.4 which pertain to prepayment penalties, and the loan contract provides for a prepayment penalty; or

(f) any clause allowing the lender to change any term of the mortgage agreement other than in those instances set forth in section 226.5b(f)(3) of Regulation Z (12 CFR Part 226).

§ 80.10 Revolving credit accounts

A revolving credit line secured by a junior mortgage must also comply with the following requirements:

(a) the line of credit must be in an amount of $ 2,500 or more;

(b) disclosure shall be provided as set forth in section 80.4 of this Part and in addition, the disclosure shall include a statement to the effect that the cost of title insurance and mortgage recording tax shall be based on the maximum amount of the credit line available to the borrower, whether advanced or not;

(c) with each monthly statement, the lender must provide the borrower with a statement which discloses the following items, to the extent applicable:

(1) previous balance;

(2) identification of transactions;

(3) credits;

(4) periodic rate(s) and fact that it (they) may vary;

(5) balance on which finance charge is computed;

(6) amount of finance charge;

(7) annual percentage rate;

(8) other charges;

(9) closing date of billing cycle;

(10) new balance;

(11) free-ride period; and

(12) address for notice of billing errors;

(d) the junior mortgage loan shall be deemed to be made in the maximum amount of the credit line available to the borrower, whether advanced or not, for such purposes as title insurance and loan-to-value ratios; and

(e) no prepayment penalty shall be permitted where such junior mortgage loan secures a revolving credit line.

§ 80.11 Bridge loans

(a) A lender may make a junior mortgage loan (as such term is defined in section 80.1 of this Part) on the terms and conditions listed in subdivisions (b) and (c) of this section, provided that the borrower occupies the property at the time the loan is made and provided that the proceeds of the loan are used or are to be used by the borrower to finance the purchase of replacement residential property, as such use is ascertained by the lender prior to processing of the application by means of a copy of a contract executed by the loan applicant for the purchase of the replacement property and by any additional means that the lender may require.

(b) A bridge loan, as defined in subdivision (a) of this section, may be made by a lender for a maximum term of one year. A bridge loan may be made, at the option of the lender, without any required repayment of either principal or interest during the term of the loan, provided

that no compounding of interest occurs. In addition, the period for the loan may be divided into two terms, in which event, prior to commencement of the additional term, the borrower may be required to pay off any interest accumulated over the first term.

(c) All bridge loans shall be offered under the following terms and conditions:

(1) The loan shall be due and payable upon the closing of the borrower's sale of the property securing the loan.

(2) The loan may be prepaid by the borrower at any time, without penalty.

(3) The notification provisions of section 80.5 of this Part shall apply to the loan throughout its duration.

(4) The disclosure provisions of section 80.4 of this Part shall apply, except that the alternative disclosures for balloon-payment loans contained in section 80.4(b) shall be stated as:

(i) In the case where the lender is offering a single-term loan, or where the lender will offer an extension of the loan, which extension was not provided for at the commencement of the loan:

THE TERM OF THE LOAN IS (MONTHS) (ONE YEAR). AS A RESULT, YOU WILL BE REQUIRED TO REPAY THE ENTIRE PRINCIPAL BALANCE AND ANY ACCRUED INTEREST THEN OWING (MONTHS) (ONE YEAR) FROM THE DATE ON WHICH THE LOAN IS MADE.
THE LENDER HAS NO OBLIGATION TO REFINANCE THIS LOAN AT THE END OF ITS TERM. THEREFORE, YOU MAY BE REQUIRED TO REPAY THE LOAN OUT OF ASSETS YOU OWN OR YOU MAY HAVE TO FIND ANOTHER LENDER WILLING TO REFINANCE THE LOAN.

(ii) In the case where the lender is offering a loan divided into two terms:

THE TERM OF THE LOAN IS MONTHS. AT MATURITY, MONTHS FROM THE DATE ON WHICH THE LOAN IS MADE, AND IN THE EVENT A REFINANCING IS REQUIRED, THE LOAN WILL BE EXTENDED AT (AN INTEREST RATE TO BE DETERMINED AT THE SOLE DISCRETION OF THE LENDER) (THE SAME RATE) (THE SAME RATE TO BE DETERMINED BY MOVEMENT IN INDEX). SUCH INTEREST RATE MAY BE HIGHER THAN THE INTEREST RATE TO BE PAID ON THIS LOAN.

In cases where the lender will extend the loan for a second term at the same rate of interest, the last sentence of the above disclosure shall be omitted.

(5) Whether the loan is offered for one term or two terms, fees and points may be taken only once at the inception of the loan, and the borrower may not be charged more than three points at that time. For purposes of this section:

(i) Permissible fees are limited to a property appraisal fee and the fees and expenses for obtaining a credit history of the applicant. Any amount collected in excess of the actual cost of the credit report fee and property appraisal fee must be returned at or prior to closing.

(ii) a point is one percent of the principal amount of the loan, which may be charged only at the time of closing of the bridge loan.

(6) The loan shall be at a fixed rate of interest within each term of the loan.

§ 80.12 Compliance with Federal regulation

(a) Lenders which comply with sections 226.19(b) and 226.20(c) of Regulation Z (12 CFR Part 226) or the provisions of 12 CFR 563.99 will be deemed to be in compliance with sections 80.4(a) and 80.5 of this Part to the extent that sections 80.4(a) and 80.5 pertain to adjustable-rate junior mortgage loan transactions whether or not the transactions would otherwise be subject to section 226.19(b) or 12 CFR 563.99(b).

(b) Lenders which comply with sections 226.5b and 226.7 of Regulation Z (12 CFR Part 226) will be deemed to be in compliance with sections 80.4(a) and 80.10(c) of this Part to the extent that sections 80.4(a) and 80.10(c) pertain to home equity plans whether or not the plans would otherwise be subject to sections 226.5b and 226.7; provided that lenders supply a copy of the disclosures required by sections 226.5b for retention by the borrower.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 81

ISSUANCE OF LARGE-DENOMINATION OBLIGATIONS
BY LICENSED AGENCIES OF FOREIGN BANKS
(Statutory authority: Banking Law, §§ 14(1), 202-a)

Sec.
81.1 Explanatory note
81.2 Definitions
81.3 Authority to issue large denomination obligations

§ 81.1 **Explanatory note**

Section 202-a of the Banking Law authorizes the [Banking Board] Superintendent to adopt regulations that permit a foreign banking corporation, licensed pursuant to article II of the Banking Law to maintain one or more agencies in New York, to issue to a corporation, partnership, trust, unincorporated association, joint-stock association or similar association obligations each in a principal amount of not less than $100,000.

§ 81.2 **Definitions**

For purposes of this Part:
(a) The term agency shall mean any agency of a foreign banking corporation licensed pursuant to article II of the Banking Law.

(b) The term large-denomination obligation shall mean any obligation, evidenced by a promissory note, a certificate of deposit, a statement, or a book entry, in the amount of $100,000 or more.

§ 81.3 **Authority to issue large-denomination obligations**

(a) Any agency which shall have given notice to the superintendent as provided hereunder shall be authorized to issue large-denomination obligations to any foreign or domestic corporation, partnership, trust, unincorporated association, joint-stock association or similar association upon the expiration of 30 days from the date such notice is given unless the superintendent shall have objected in writing to such agency within such 30-day period. The notice to be provided pursuant to this Part shall be in such form and contain such information as the superintendent may prescribe.

(b) For purposes of this Part, a large-denomination obligation, evidenced by a promissory note or a certificate of deposit in bearer form, shall be deemed to be issued to the initial holder thereof.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS

PART 82
ALTERNATIVE MORTGAGE INSTRUMENTS

(Statutory authority: Banking Law, §§ 6-f, 14[**1**])

Sec.

82.1 Authorization for alternative mortgage instruments
82.2 Scope
82.3 Adjustments to rate, payment, balance or term
82.4 Negative amortization (deferral and capitalization)
82.5 Notifications
82.6 Disclosure
82.7 Prepayment penalties
82.8 First lien revolving credit lines
82.9 Compliance with Federal regulation
82.10 Bridge loans

§ 82.1 **Authorization for alternative mortgage instruments**

(a) Notwithstanding any provisions of State law, regulation or interpretation to the contrary, this Part constitutes the exclusive authority for banks, trust companies, savings banks, savings and loan associations, credit unions, persons and entities engaging in the business described in section 590, article 12-D of the Banking Law (other than federally licensed branches and agencies of foreign banking corporations, national banks, federal savings banks, federal savings and loan associations, federal credit unions and their subsidiaries which are exempt from licensing as mortgage bankers) and branches or agencies of foreign banking corporations licensed pursuant to article II of the Banking Law ("lender") to make, sell, purchase or participate in mortgage loans in a principal amount of less than $250,000 other than fixed rate, equal payment, self-amortizing loans. For purposes of this Part, the term mortgage loan is limited to the types of loans described in section 82.2(a) of this Part. Such institutions may make, sell, purchase or participate in the types of mortgage loans described in this Part, provided all such loans are made in accordance with the provisions of this Part. Such loans shall be repayable either in biweekly or in monthly installments. The authorization for graduated payment mortgage loans contained in this Part is made pursuant to the [Banking Board's] Superintendent's authority under section 6-f of the Banking Law, any other provisions of State law to the contrary notwithstanding. Mortgage loans in the principal amount of $250,000 or more, which would otherwise not be subject to this Part, may be structured to provide for negative amortization, if the lender adheres to the provisions of sections 82.5 and 82.6 of this Part.

(b) Nothing in this Part authorizes a mortgage loan which contains a demand feature or a mortgage loan which is structured either as a price level adjusted mortgage (PLAM) or a shared appreciation mortgage (SAM).

Further, a balloon mortgage loan, a pledged-account mortgage loan and a growing equity mortgage loan may not be structured to provide for negative amortization.

§ 82.2 **Scope**

(a) Applicability. This Part applies to loans secured by a first mortgage on real property improved by a one-to-four-family residence occupied by the owner (including individual condominium units) or by a first lien on an ownership interest in certificates of stock or other evidence of an ownership interest in, and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate. For purposes of this Part all such loans are mortgage loans.

(b) Permissible features. Subject to the limitations set forth in section 82.3 of this Part, a lender may adjust the interest rate, payment, balance or term to maturity on any mortgage loan as is authorized by the loan contract. In addition, this Part authorizes a lender to make, sell, purchase or participate in balloon payment, growing equity and pledged account mortgage loans in a principal amount of less than $250,000 and which may be structured as nonamortizing or partially amortizing provided that a balloon-payment mortgage loan must have an initial fixed-rate period of three years.

(c) Loan-to-value ratio. The mortgage loans authorized by this Part may be made in an amount not exceeding 90 percent of the appraised value of the property, or 90 percent of the purchase price or the appraised value of the stock and lease in the case of a cooperative apartment unit, as calculated at the time the loan is made, provided that such loan-to-value ratio may equal 97 percent for any such loan except a balloon-payment mortgage loan if:

(1) in addition to provisions for full amortization of the loan, the loan contract requires, except in the case of cooperative apartment loans, that the pro rata portion of estimated annual taxes and assessment on the security property (based on the number of installments due annually) be paid to the lending institution with each installment payment; and
(2) during the time that the unpaid balance of the loan exceeds a loan-to-value ratio of 90 percent (as determined at the time the loan is made) the part of such balance exceeding 80 percent of value is guaranteed or insured by a mortgage insurance company; except that any unpaid loan balance secured by a pledged savings account or pledged securities or other guarantee or collateral, the value of which, as found in good faith by an officer of the lender, equals or exceeds the part of the loan balance exceeding 80 percent of the loan need not be so guaranteed or insured.

For mortgage loans in an amount greater than $250,000, the appraised value shall be determined by an appraiser licensed or certified or working under the supervision of an appraiser who is licensed or certified pursuant to article 6-E of the Executive Law.

(d) Term. The term of any such mortgage loan may not exceed 40 years; the term of any balloon-payment mortgage may not be less than three years.

(e) Electronic Disclosures and Notifications. Electronic disclosures and notifications are permitted as set forth in this Part. The term electronically transmitted or electronic media shall mean any transmission via diskette, wire or tape including but not limited to the Intranet (interactive or otherwise), the Internet, any other computer network, electronic mail, or any other similar method of transmission.

§ 82.3 **Adjustments to rate, payment, balance or term**

Except for such further limitations on adjustment (i.e., "ceilings", "floors" or "initial documents") as may be set forth in the loan contract:

(a) Adjustments to the interest rate shall correspond directly to the movement of an interest rate index or an index that measures the rate of inflation, which index is readily available to and verifiable by the borrower and is beyond the control of the lender; provided that a lender may decrease the interest rate at any time, and provided further, that interest rate adjustments may be rounded to the nearest fraction of a percentage point when so stated in the contract. A lender may also increase the interest rate pursuant to a formula or schedule that specifies the amount of the increase, the time at which it may be made, and which is set forth in the loan contract.

(b) Adjustments to the monthly payment and loan balance may be made to reflect interest rate adjustments and, in the case of a payment adjustment, where the adjustment reflects change in the loan balance or is made pursuant to a formula or a schedule specifying the percentage or dollar change in the payment, as set forth in the contract.

(c) Any combination of indices or a moving average of index values may be used as an index, but a lender may not change or reserve the right to change the index or indices specified in the loan contract unless the initial index or indices specified become(s) unavailable during the term of the loan.

(d) The loan term may be adjusted only to reflect a change in the interest rate, the payment or the loan balance.

§ 82.4 **Negative amortization (deferral and capitalization)**

During the term of the loan the loan-to-value ratio may increase above the initial loan-to-value ratio if the increase results from a change authorized under sections 82.3 and 82.2(b) of this Part, but the loan balance may not exceed 125 percent of the original appraised value of the property unless the loan contract provides that the payment shall be adjusted at least once every five years, beginning no later than the tenth year of the loan, to a level sufficient to

amortize the loan at the then existing interest rate and loan balance over the remaining term of the loan.

§ 82.5 **Notifications**

At least 30 but not more than 120 days prior to a payment adjustment and at least 90 but not more than 120 days prior to the expected maturity of a balloon-payment mortgage, a lender shall provide the borrower with notice in writing or, where the borrower has consented in advance, via electronic media of the adjustment or of maturity. However, where the loan contract provides that changes in the interest rate shall occur more frequently than changes in the payment, the lender need not notify the borrower of changes in the rate, nor of changes in the loan balance or term resulting from a rate change, until notice of a payment adjustment is given or at least annually.

For purposes of notification, either in writing or, where the borrower has consented in advance, via electronic media, a payment adjustment is considered to occur as of the date of the interest-rate change immediately preceding the due date of the adjusted payment. In addition, where the loan contract sets out a schedule of payment adjustments, notice need not be given of payment changes made pursuant to that schedule.

With regard to the electronic transmission of notices, a hard-copy of such notice shall be mailed to each applicant who indicates that he or she does not have the computer capacity to down-load and print such notice. In those instances in which a hard-copy of the notice is not mailed to the applicant, the lender must be able to demonstrate that information was obtained as to the applicant's computer capacity to down-load and print such notice.

§ 82.6 **Disclosure**

(a) Prior to accepting an application for a loan, a lender must disclose in writing or via electronic media to each loan applicant, in one or more documents, and in plain language, the terms of the types(s) of loan(s) available to the applicant. The disclosure material provided to an applicant shall include at least such of the following information as is relevant to the type of loan being offered:

(1) the term to maturity;

(2) the initial interest rate, if known, or the manner in which the initial interest rate will be established;

(3) the amount of the initial payment, if known, and an explanation of the lending institution's amortization schedule for the loan, including how the lending institution determines both the amount of each payment and what proportion of each payment will be credited to interest;

(4) a full explanation of how the interest rate, the payment, the loan balance, or the term to maturity may be adjusted (including identification of the index/indices to be used and how index values may be obtained by the borrower), and how the adjustment of one item may affect the others;

(5) what information will be contained in each notice of an adjustment and, in the case of a non- or partially amortized loan, in the notice of maturity, and how far in advance of an adjustment or maturity each notice will be provided;

(6) where a valid prepayment penalty will be provided for in the loan contract, a description of such penalty;

(7) if the loan contract will provide for escrow payments, a statement of that fact and an explanation of the purpose of requiring escrow payments and how the amount of such payments is established;

(8) a hypothetical example, illustrative of the type of credit being offered, of the effect or the combination of effects that an increase in the rate on the loan may have on the amount of the monthly payment, or the number of monthly payments or the amount of the final payment; and

(9) the history of the movements in the index chosen for the loan, including the highest and lowest interest rates reached by the index, and the dates at which these levels were reached, for each of the three calendar years preceding the year in which the loan is made, provided further that if a loan is made after August 31st of any calendar year, the disclosures shall include the high and low figures for the index's performance through June 30th of that year and such disclosure may be used as the disclosure of the high and low in index performance for the calendar year next preceding the calendar year in which the loan is made for any loan made prior to March 1st of a calendar year. If an application is accepted by telephone, the lender shall mail, deliver or transmit by electronic media the required disclosure statement within three business days.

(b) In the case of a balloon-payment mortgage loan, the disclosure required to be given pursuant to subdivision (a) of this section shall include the following notice, or a notice to like effect, as applicable, which notice may be given in writing or via electronic media and which shall also be included in the loan contract:

THE TERM OF THE LOAN IS _____YEARS. AS A RESULT, YOU WILL BE REQUIRED TO REPAY THE ENTIRE PRINCIPAL BALANCE AND ANY ACCRUED INTEREST THEN OWING_____YEARS FROM THE DATE ON WHICH THE LOAN IS MADE.

THE LENDER HAS NO OBLIGATION TO REFINANCE THIS LOAN AT THE END OF ITS TERM. THEREFORE, YOU MAY BE REQUIRED TO REPAY THE LOAN OUT OF ASSETS YOU OWN OR YOU MAY HAVE TO FIND ANOTHER LENDER WILLING TO REFINANCE THE LOAN.

ASSUMING THIS LENDER OR ANOTHER LENDER REFINANCES THIS LOAN AT MATURITY, YOU WILL PROBABLY BE CHARGED INTEREST AT MARKET RATES PREVAILING AT THAT TIME AND SUCH RATES MAY BE HIGHER THAN THE INTEREST RATE PAID ON THIS LOAN. YOU MAY ALSO HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW MORTGAGE LOAN.

If the lender guarantees refinancing of the loan for additional terms

until the principal balance has been repaid but does not provide for the recalculation of the interest rate at the time of each refinancing according to a prespecified index, the disclosures and the loan contract shall include the following notice or a notice to like effect, as applicable, which notice may be given in writing or via electronic media:

THE TERM OF THE LOAN IS _____YEARS. AT MATURITY, _____YEARS FROM THE DATE ON WHICH THE LOAN IS MADE, AND AT TIME OF EACH FURTHER REFINANCING, THE LOAN WILL BE REFINANCED AT AN INTEREST RATE ESTABLISHED BY THE LENDER WITH REFERENCE TO MARKET RATES. SUCH INTEREST RATE(S) MAY BE HIGHER THAN THE INTEREST RATE PAID ON THIS LOAN.

In addition, at the time it commits itself to make the loan, the lender must inform the applicant in writing or via electronic media of the principal balance which will be due at maturity of the loan or the initial term of the loan (assuming all scheduled principal payments, if any, are made in accordance with the loan contract) and the fact that the borrower will receive notice of maturity in writing or, where the borrower has consented in advance, via electronic media from the lender and the time periods within which such notice will be sent.

(c) In the case of a graduated payment mortgage loan, the disclosure required pursuant to subdivision (a) of this section shall include a disclosure that the interest costs for the loan will be higher than the interest costs for a fixed-rate amortizing loan of the same term and for the same amount, together with an explanation for this result.

(d) In the case of a pledged-account mortgage loan, the disclosures required pursuant to subdivision (a) of this section shall include an example of the difference in interest cost between a loan secured by property and a savings account and a loan secured by property alone.

(e) In the case of a step mortgage loan, the disclosures required pursuant to subdivision (a) of this section shall include the initial interest rate and dollar amount of the monthly payment in addition to a table which indicates the monthly payments at identified interest rates for the entire term.

(f) In the case of a preferred rate mortgage loan, the disclosures required pursuant to subdivision (a) of this section shall include the event that would allow the creditor to increase the interest rate, the rules relating to the termination of the preferred rate, any fees that may be charged when the rate is changed and how the new rate will be determined.

(g) With regard to the electronic transmission of disclosures, a hard-copy of such disclosure shall be mailed to each applicant who indicates that he or she does not have the computer capacity to down-load and print such disclosure. In those instances in which a hard-copy of the disclosure is not mailed to the applicant, the lender must be able to demonstrate that information was obtained as to the applicant's computer capacity to down-load and print such disclosure.

§ 82.7 **Prepayment penalties**

In addition to the requirements set forth in section 5-501(3)(b) of the General Obligations Law which limit prepayment penalties to the first year of a mortgage loan, no prepayment penalty may be taken for any mortgage loan made pursuant to this Part unless, according to the provisions of the note and mortgage, the interest rate for the loan shall remain fixed for a period of at least five years, the loan contract provides for a prepayment penalty and the mortgage broker, mortgage banker and/or exempt organization complies with the provisions of section 38.2, 38.3, and 38.4 which pertain to repayment penalties.

§ 82.8 **First lien revolving credit lines**

(a) Notwithstanding the provisions of sections 82.1 through 82.7 of this Part, except to the extent such provisions are incorporated herein, a lender may offer a revolving credit line secured by a first lien on the type of property described in section 82.2(a) of this Part, to a natural person who owns the property free of any prior mortgage lien, provided that the loan is made pursuant to the provisions of sections 80.3, 80.4 (excluding the provisions of section 80.4(c)), 80.5(b), 80.6 (without reference to Part 334 of the superintendent's regulations), 80.7, 80.8, 80.9 (excluding the provisions of section 80.9(e)) and 80.10 of this Title and, if applicable, subdivision 2 of section 590-a of the Banking Law.

(b) Such loans may be made as fixed-rate loans or with the features authorized by this Part, provided that no such loans may contain negative amortization features.

§ 82.9 **Compliance with Federal regulation**

(a) Any bank, trust company, savings bank, savings and loan association, credit union, mortgage banker and branch or agency of a foreign banking corporation licensed pursuant to article 2 of the Banking Law which complies with sections 226.19(b) and 226.20(c) of Regulation Z (12 CFR part 226) or the provisions of 12 CFR 563.99 will be deemed to be in compliance with sections 82.5 and 82.6(a) of this Part to the extent that sections 82.5 and 82.6(a) pertain to adjustable-rate first lien mortgage loan transactions whether or not the transactions would otherwise be subject to section 226.19(b) or 12 CFR 563.99(b).

(b) Any bank, trust company, savings bank, savings and loan associ-

ation, credit union, mortgage banker, and branch or agency of a foreign banking corporation licensed pursuant to article 2 of the Banking Law which complies with sections 226.5b and 226.7 of Regulation Z (12 CFR part 226) will be deemed to be in compliance with sections 80.4(a) and 80.10(c) to the extent that sections 80.4(a) and 80.10(c) pertain to home equity plans whether or not the plans would otherwise be subject to sections 226.5b and 226.7; provided that such lenders supply a copy of the disclosures required by section 226.5b for retention by the borrower.

§ 82.10 **Bridge loans**

(a) A lender may make a first-lien mortgage loan on the terms and conditions listed in subdivisions (b) and (c) of this section, provided that the borrower occupies the property at the time the loan is made and provided that the proceeds of the loan are used or are to be used by the borrower to finance the purchase of replacement residential property, as such use is ascertained by the lender prior to processing of the application by means of a copy of a contract executed by the loan applicant for the purchase of the replacement property and by any additional means that the lender may require.

(b) A bridge loan, as defined in subdivision (a) of this section, may be made by a lender for a maximum term of one year. A bridge loan may be made, at the option of the lender, without any required repayment of either principal or interest during the term of the loan, provided that no compounding of interest occurs. In addition, the period for the loan may be divided into two terms, in which event, prior to commencement of the additional term, the borrower may be required to pay off any interest accumulated over the first term.

(c) All bridge loans shall be offered under the following terms and conditions:

(1) The loan shall be due and payable upon the closing of the borrower's sale of the property securing the loan.

(2) The loan may be prepaid by the borrower at any time, without penalty.

(3) The notification provisions of section 82.5 of this Part shall apply to the loan throughout its duration.

(4) The disclosure provisions of section 82.6 of this Part shall apply, except that the alternative disclosures for balloon-payment loans contained in section 82.6(b) shall be stated as:

(i) In the case where the lender is offering a single term loan, or where the lender will offer an extension of the loan, which extension was not provided for at the commencement of the loan:

THE TERM OF THE LOAN IS _____(MONTHS) (ONE YEAR). AS A RESULT, YOU WILL BE REQUIRED TO REPAY THE ENTIRE PRINCIPAL BALANCE AND ANY ACCRUED INTEREST THEN OWING _____(MONTHS) (ONE YEAR) FROM THE DATE ON WHICH THE LOAN IS MADE.

THE LENDER HAS NO OBLIGATION TO REFINANCE THIS LOAN AT THE END OF ITS TERM. THEREFORE, YOU MAY BE REQUIRED TO REPAY THE LOAN OUT OF ASSETS YOU OWN OR YOU MAY HAVE TO FIND ANOTHER LENDER WILLING TO REFINANCE THE LOAN.

(ii) In the case where the lender is offering a loan divided into two terms:

THE TERM OF THE LOAN IS _____MONTHS. AT MATURITY, _____MONTHS FROM THE DATE ON WHICH THE LOAN IS MADE, AND IN THE EVENT A REFINANCING IS REQUIRED, THE LOAN WILL BE EXTENDED AT (AN INTEREST RATE TO BE DETERMINED AT THE SOLE DISCRETION OF THE LENDER) (THE SAME RATE) (THE SAME RATE TO BE DETERMINED BY MOVEMENT IN INDEX). SUCH INTEREST RATE MAY BE HIGHER THAN THE INTEREST RATE TO BE PAID ON THIS LOAN.

In cases where the lender will extend the loan for a second term at the same rate of interest, the last sentence of the above disclosure shall be omitted.

(5) Whether the loan is offered for one term or two terms, fees and points may be taken only once at the inception of the loan, and the borrower may not be charged more than three points at that time. For purposes of this section:

(i) Permissible fees are limited to a property appraisal fee and the fees and expenses for obtaining a credit history of the applicant. Any amount collected in excess of the actual cost of the credit report fee and property appraisal fee must be returned at or prior to closing.

(ii) a point is one percent of the principal amount of the loan, which may be charged only at the time of closing of the bridge loan.

(6) The loan shall be at a fixed rate of interest within each term of the loan.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 84
CERTAIN MORTGAGE LOANS

(Statutory authority: Banking Law, §§ 14(1), 103(4), 235(5-a), (6), 380(1), (3))

Sec.
84.1 Explanatory note
84.2 Definitions
84.3 Statement of policy
84.4 Maximum mortgage loan for certain mortgagees
84.5 Appraisals

§ 84.1 **Explanatory note**

Chapter 1 of the Laws of 1983 vested in the [Banking Board] Superintendent broad authority to prescribe regulations governing loans secured by real estate made by banks, trust companies, savings banks and savings and loan associations. At the same time, chapter 1 deleted from the Banking Law certain rigid technical requirements, principally in the area of maximum loan-to-appraised value limitations, which had applied to such loans. This Part establishes certain prudential requirements and applies to all loans secured by real estate or cooperative apartment units, and to which the provisions of sections 103(4), 235(5-a), 235(6), 380(1) and 380(3) apply. The provisions of this Part do not apply to any loan with respect to which the [Banking Board] Superintendent has adopted regulations pursuant to either section 6-f of the Banking Law (alternative mortgage instruments) or sections 103(4-a), 235(6-a) and 380(4-a) of such law (junior mortgage authority).

§ 84.2 **Definitions**

For purposes of this Part:

(a) The term mortgage loan shall mean any loan made on the security of residential, nonresidential, improved or unimproved real estate where the lender relies upon such real estate as security for the loan, including a loan secured by a lien on an existing ownership interest in certificates of stock or other evidence of an ownership interest in, and for a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate. The term mortgage loan shall not include any loan not considered to be a loan upon the security of real estate within the meaning of section 103(4)(b) of the Banking Law.

(b) The term lender shall mean a bank, trust company, savings bank or savings and loan association organized under the provisions of the Banking Law.

§ 84.3 **Statement of policy**

Except as provided herein, the [Banking Board] Superintendent has determined not to reinstate specific loan limits for improved or unimproved real estate per se or lending limits relating to locational requirements (except to the extent that the same continue to be provided for in the Banking Law). At the same time, the [board] Superintendent expects lenders to make and purchase mortgage loans under specific internal guidelines which are consistent with safe and sound banking practices. Such guidelines shall, among other things, contain provisions which ensure that the lender will meet the credit needs of its entire community, including low- and moderate-income neighborhoods and establish limits on:

(a) credit concentrations to any single mortgagor (including affiliates);
(b) credit concentrations by loan type and location; and
(c) loan-to-appraisal ratios.

These guidelines shall be available to the [superintendent] Superintendent to review in the course of any examination or investigation which he may undertake.

§ 84.4 **Maximum mortgage loan for certain mortgagees**

No bank or trust company shall make a mortgage loan in an amount in excess of 15 per centum of the capital stock, surplus fund and undivided profits of such bank or trust company.

§ 84.5 **Appraisals**

Mortgage loans may be made by a bank, trust company, savings bank or savings and loan association upon a written and signed certificate by one person appointed by its board of directors or board of trustees which states that the real property described in the mortgage has been examined and which appraises the value of such property.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 85
INVESTMENT IN SERVICE CORPORATIONS BY SAVINGS BANKS AND SAVINGS AND LOAN ASSOCIATIONS

(Statutory authority: Banking Law, §§ 235-d, 379-b)

Sec.
85.1 Scope
85.2 Permitted activities
85.3 Investment procedures
85.4 Aggregate limitation
85.5 Debt limitation for service corporations
85.6 Separate existence of service corporation
85.7 Examination of service corporation

§ 85.1 **Scope**

The provisions of this Part apply to all savings banks and savings and loan associations which invest in the stock, capital notes and debentures of service corporations. The authority contained in this Part shall be in addition to any other lending or investment powers authorized by law or regulation.

§ 85.2 **Permitted activities**

(a) Sections 235-d and 379-b of the Banking Law permit savings banks and savings and loan associations to invest in bank service corporations which may make such investments and render such services as are authorized for their parent savings banks or savings and loan associations, and which may engage in such other activities as may be prescribed by the [Banking Board] Superintendent by general regulation. Savings banks and savings and loan associations may make such investments to the extent and upon the conditions that have been authorized by the [Banking Board] Superintendent.

(b) A service corporation may engage in the following activities:

(1) originating, investing in, purchasing, selling, servicing or otherwise dealing in, directly or through participation, loans of any type which may be made by a thrift institution;

(2) providing services primarily for other financial institutions (e.g., accounting, auditing, clerical, consulting, data processing, investment advisory, managerial);

(3) providing insurance brokerage or agency services;

(4) providing travel agency and tax preparation services;

(5) providing real estate services (e.g., brokerage, appraisal, inspection, property management);

(6) providing courier services;
(7) sponsoring, organizing and advising open-end mutual funds;
(8) providing securities services (e.g., brokerage, investment advice);
(9) leasing personal property to customers;
(10) engaging in factoring;
(11) acquiring investment securities;
(12) issuing letters of credit;
(13) issuing credit cards and engaging in credit card operations;
(14) acquiring improved or unimproved real property for the purpose of subdividing, developing, constructing improvements thereon, and reselling, leasing or operating such property for the production of income; and
(15) any other activity specifically approved by the [Banking Board] Superintendent.

§ 85.3 **Investment procedures**

Any capital investment in either de novo or existing service corporations by savings banks or savings and loan associations shall be made in accordance with the procedures contained in this section.

(a) Prior notice. Savings banks and savings and loan associations which seek to make a capital investment in a service corporation which will engage in any of the activities listed in section 85.2(b)(1)-(14) of this Part, shall notify the [superintendent] Superintendent, in writing, of such intention not less than 45 days prior to making such investment. If the [superintendent] Superintendent does not object, in writing, within 45 days after receipt of a completed notice, the savings bank or savings and loan association may make the contemplated investment.

(b) Application to [Banking Board] Superintendent. Savings banks and savings and loan associations which seek to make a capital investment in a service corporation which will engage in any activity requiring the specific approval of the [Banking Board] Superintendent shall submit a written application therefor. [The Banking Board may approve such application by a three-fifths vote of all its members.]

(c) Information required. Savings banks and savings and loan associations which give the [superintendent] Superintendent notice as specified in subdivision (a) of this section or make application to the [Banking Board] Superintendent as specified in subdivision (b) of this section shall, together with such notice or application, as the case may be, submit the information required to be submitted by a bank or trust company in accordance with sections 113.2 and 113.3 of Supervisory Procedure CB 113 of this Title.

§ 85.4 **Aggregate limitation**

The aggregate amount of a savings bank's or savings and loan association's investments in the stock, capital notes and debentures of its service corporations, together with the aggregate amount of loans to such service corporations, shall not exceed 10 percent of the assets of

such savings bank or savings and loan association. This limitation shall not apply to loans made to service corporations whose activities are limited to those specified in section 85.2(b)(1) of this Part. For the purposes of this section, a loan shall include any loan or advance made directly or indirectly to a service corporation (excluding accounts payable incurred in the ordinary course of business and paid within 60 days) and guarantees, standby letters of credit or take-out commitments issued to or for the account of its service corporations or their subsidiaries. For example, a loan to a joint venture or other entity in which a service corporation has a direct or indirect equity interest shall be deemed to be a loan to a service corporation for the purposes of this section.

§ 85.5 **Debt limitation for service corporations**

No service corporation shall have total outstanding consolidated debt (exclusive of accounts payable incurred in the ordinary course of business and paid within 60 days and capital notes and debentures) exceeding 20 times the total consolidated net worth or the service corporation (including capital notes and debentures). For the purposes of this section:

(a) consolidated debt shall include the entire amount of any obligation resulting from the sale of assets with recourse; and

(b) capital notes and debentures shall refer those obligations which are subordinated to the claims of unsecured general creditors and which have an original average weighted maturity of at least seven years.

§ 85.6 **Separate existence of service corporation**

Every service corporation shall be operated in a manner which demonstrates to the public that the service corporation has separate corporate existence and is operationally distinct from its parent savings bank or savings and loan association. Every instrument which evidences a borrowing by a service corporation shall specifically indicate whether or not, and to what extent, its parent institution is liable for such borrowing.

§ 85.7 **Examination of service corporation**

No savings bank or savings and loan association shall invest in or make loans to any service corporation or subsidiary thereof after the effective date of this Part, unless and until the parent institution has executed and filed with the [superintendent] Superintendent a letter agreement which (a) states that the service corporation is subject to the general supervision of the [Banking] Department, (b) permits periodic examinations of the service Corporation and/or any subsidiary thereof, as the [superintendent] Superintendent Deems necessary, and (c) states that the parent institution will reimburse the [Banking]Department for the total cost of such examinations.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS

PART 86

ORGANIZATION AND OPERATION OF STOCK-FORM SAVINGS BANKS AND SAVINGS AND LOAN ASSOCIATIONS

(Statutory authority: Banking Law, §§ 14, 14-e)

Sec.

86.1 Scope
86.2 Definitions
86.3 De novo chartering; conversions from Federal charter to State charter, followed by a simultaneous conversion to stock-form
86.4 General provisions relating to the conversion (other than a conversion effected pursuant to any contrary provisions of section 86.12 of this Part) of a thrift from mutual to stock-form of organization
86.5 Public offering of capital stock in connection with the conversion of mutual thrift institutions to stock-form
86.6 Sale of control in connection with the conversion of mutual thrift institutions to stock-form
86.7 Applicability of certain provisions of the Banking Law to stock-form savings banks
86.8 Applicability of certain provisions of the Banking Law to stock-form savings and loan associations
86.9 Formation of a holding company in connection with the conversion of a mutual institution to stock form
86.10 Limitations on certain acquisitions of control of stock-form thrift institutions
86.11 Conflict between State and Federal law and regulation
86.12 Supervisory stock conversions
86.13 Application for conversion
86.14 Proxy statement
86.15 Offering circular

§ **86.1 Scope**

This Part implements the [Banking Board's] Superintendent's authority under section 14-e of the Banking Law to facilitate the organization of stock-form savings banks and stock-form savings and loan associations and the conversion of mutual savings banks and savings and loan associations to stock form consistent with the declaration of policy of chapter one of the laws of 1984.

§86.2 **Definitions**

As used in this Part and in any forms promulgated hereunder, the following terms

shall have the following meanings, unless the context clearly requires otherwise:

(a) The terms company and doing business shall have the same meanings ascribed to them in section 141 of the Banking Law.

(b) The term competing offeror shall mean any person other than a proposed acquiror who makes an offer to purchase control of a converting institution pursuant to section 86.6 of this Part.

(c) The term control shall have the same meaning ascribed to it in section 143-b(1) of the Banking Law.

(d) The term eligible account holder shall mean any depositor of a mutual savings bank who owned in such bank one or more accounts valued in the aggregate at $100 or more on the eligibility record date, or any shareholder of a mutual savings and loan association who owned shares in such association valued at $100 or more on the eligibility record date.

(e) The term eligibility record date shall mean the date established by the board of trustees of a savings bank or the board of directors of a savings and loan association as the date on which depositors of such savings bank or shareholders of such savings and loan association shall be deemed to be eligible account holders. The eligibility record date shall be no less than 30 days and no more than 120 days prior to the date on which the plan of conversion is adopted by such directors or trustees.

(f) The term person shall mean any corporation, partnership, trust, unincorporated association, any other entity or a natural person.

(g) The term preliminary offering circular shall mean the form of offering circular filed with the [superintendent] Superintendent which has not been approved by the [superintendent] Superintendent for use in connection with the sale of capital stock to be issued by the converting institution.

(h) The term preliminary proxy statement shall mean the form of proxy statement filed with the [superintendent] Superintendent which has not been approved for public distribution by the [superintendent]Superintendent.

(i) The term proposed acquiror shall mean any person who makes an offer to purchase control of a converting institution pursuant to section 86.6 of this Part, which offer is accepted by the board of directors or trustees of the converting institution and is submitted to the [superintendent] Superintendent for approval as part of the plan of conversion adopted by such directors or trustees.

(j)(1) The term proxy solicitation shall mean, whether made through the use of the mails, telephone, print media or otherwise:

(i) any request for a proxy whether or not accompanied by or included in a form of proxy;

(ii) any request to execute, not to execute, or to revoke a proxy;

(iii) the furnishing of a form of proxy or other communication to eligible account holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy; or

(iv) any action or statement that is designed to influence or may reasonably be anticipated to have the effect of influencing the decision whether, or how, to vote by any eligible account holder.

(2) The term proxy solicitation shall not include:

(i) the furnishing of a form of proxy to an eligible account holder upon the unsolicited request of such eligible account holder;

(ii) the performance by any person of ministerial acts on behalf of a person soliciting a proxy;

(iii) statements or publications by any person which do no more than analyze the plan of conversion or specific portions thereof presented to eligible account holders by the board of trustees or board of directors; and

(iv) any proxy solicitation by or on behalf of any person who does not, at any time during such solicitation, seek directly or indirectly, either on his/her own or another's behalf, the power to act as proxy for an eligible account holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization; provided that this subparagraph shall not apply to the thrift or any person acting on the thrift's behalf.

(k) The term subaccount shall mean, with respect to each eligible account holder, the portion of the liquidation account which such eligible account holder would be entitled to receive pursuant to this Part upon a complete liquidation of the converted institution.

(l) The term thrift shall mean any mutual savings bank or mutual savings and loan association organized under or subject to the provisions of article VI or X of the Banking Law.

§86.3 **De novo chartering; conversions from Federal charter to State charter, followed by a simultaneous conversion to stock-form**

(a) Five or more persons my incorporate a stock-form thrift in accordance with the requirements of articles II and XV of the Banking Law governing the incorporation of a bank or trust company. If the shares of a de novo stock-form thrift will be offered in a public offering, an offering circular in the form prescribed in section 86.15 of this Part shall be submitted to the [superintendent] Superintendent for his approval within such time as shall be prescribed in this Part as a condition precedent to the issuance of an authorization certificate to such thrift.

(b) Where an existing federally chartered mutual savings bank or mutual savings and loan association proposes to convert to State charter pursuant to the provisions of Part 87 of this Title and simultaneously therewith to convert from mutual form to stock-form, any vote taken by the depositors of the Federal mutual thrift which is in compliance with the provisions of this Part shall be deemed equivalent to a vote required of the depositors of State-chartered mutual thrifts for purposes of this Part.

§ 86.4 **General provisions relating to the conversion (other than a conversion effected pursuant to any contrary provisions of section 86.12 of this Part) of a thrift from mutual to stock-form of organization**

(a) (1) The board of trustees or the board of directors, as the case may be, of a thrift may determine to convert the institution to stock-form of ownership, and to seek the [superintendent's] Superintendent's approval therefor, by first securing the approval of its

plan of conversion by a majority of the entire board of such trustees or directors, at a meeting duly held upon not less than 15 days' notice (or upon such shorter notice, or without notice, provided all the members of such board waive in writing such 15-day notice period), said notice to contain a copy of the plan of conversion proposed to be filed with the [superintendent] Superintendent.

(2) Following the approval of the plan of conversion by the board of trustees or directors, the converting institution shall promptly provide public notice of its plan to convert to stock form. Such public notice shall be made by means of the posting of a notice in a conspicuous place in the principal and branch offices (which term shall not include sepa rate electronic facilities) of the institution, the issuance of a press release containing all material details of the proposed conversion (and such other information required to make the press release not false or misleading) and the placing of an advertisement containing such material details (and such other information, if any) in a newspaper of general circulation in the communities where the principal offices and branches of the converting institution are located. Thereafter, such institution shall file with the [superintendent] Superintendent for approval an application for conversion containing all of the information required by section 86.13 of this Part. The [superintendent's] Superintendent's approval or disapproval shall be given within 60 days after the [superintendent] Superintendent shall have acknowledged to the applicant that the contents of the application and the required documents and exhibits are substantially complete and acceptable in the form submitted.

(3) If approved, such institution shall submit the plan of conversion to its eligible account holders, for approval at a meeting held upon written notice given no less than 20 days nor more than 45 days prior to the date of such meeting. Separate notices shall be sent to joint account holders at each address appearing on the records of the institution as the address of a joint account holder, except that only one notice need be sent to joint account holders residing at the same address. Such notice shall be sent by first class mail postage prepaid and shall consist of a notice of meeting and shall be accompanied by a proxy card and either a proxy statement or a short-form proxy statement, each to comply with the provisions of section 86.14 of this Part. The proxy card: shall indicate in boldface type whether the proxy is solicited on behalf of the management; shall provide specifically designated blank spaces for dating and signing such proxy card; shall identify clearly and impartially each matter or group of related matters intended to be acted upon at the meeting; shall be clearly labelled "revocable proxy" in boldface type; shall describe any charter or other requirement restricting or conditioning voting by proxy; shall contain an acknowledgment by the person giving the proxy that he has received a proxy statement prior to signing the form of proxy; shall contain the date, time and place of meeting, if practicable; shall provide by a box or otherwise, a means whereby the depositor or shareholder solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter referred to therein as intended to be acted upon; and shall indicate in boldface type how the proxy shall be voted on each such matter as to which no choice is so specified. Only one joint account holder must sign a proxy card sent in connection with a joint account, if clearly stated on the proxy card. No such proxy shall confer authority to vote at any meeting other

than the meeting (or any adjournment thereof) to vote on conversion. A proxy may be deemed to confer authority to vote with respect to matters incident to the conduct of such meeting. The proxy statement or form of proxy shall provide that the votes represented by proxy will be voted; that, where the depositor or shareholder solicited specifies by means of a ballot a choice with respect to any matter to be acted upon, the votes will be voted in accordance with the specifications so made; and that if no choice is specified, the votes will be cast as indicated in boldface on the proxy card.

(4) A vote of 75 percent in amount of deposit liabilities or book value of outstanding shares, as the case may be, represented in person or by proxy at such meeting shall be required for approval of the plan.

No specific minimum amount of deposits or shares shall be required to be present either in person or by proxy at such meeting in order to constitute a quorum for the transaction of business. No eligible account holder may cast more than 1,000 votes at such meeting. The board of trustees or board of directors, as the case may be, shall appoint an independent custodian and tabulator to receive and hold the proxy cards and to count the votes cast in favor of and in opposition to the plan of conversion. In the event provision is made for the receipt of proxies at offices of the converting institution, proxies must be deposited unopened in sealed containers that are maintained and delivered unopened in a sealed state to the custodian and tabulator. Such custodian and tabulator shall not be affiliated with any party with an interest in the transaction, including any financial advisor, underwriter, appraiser, law firm or proxy solicitation firm engaged by the board of trustees or directors in connection with the conversion.

(5) A depositor or shareholder shall be eligible to vote if he shall have met the requirements of section 9019 of the Banking Law as of the eligibility record date.

(6) Within five days after the meeting of shareholders or depositors (which in any event shall be before the amended organization certificate of the coverting thrift is filed pursuant to subdivision (c) of this section), the president and secretary of the coverting institution shall certify to the [superintendent]<u>Superintendent</u> the result of the vote taken at such meeting.

(b) The application for conversion shall be in the form prescribed by section 86.13 of this Part and shall be accompanied by the fee specified in section 1.2 of Supervisory Policy G 1.

(c) When the [superintendent] <u>Superintendent</u> shall have determined to approve or disapprove the application for conversion, he or she shall so advise the converting institution in writing and, in the case of a determination of approval, and after the converting institution shall have completed arrangements to sell its shares and shall have taken such other steps as may be required hereunder, the [superintendent] <u>Superintendent</u>, if satisfied that the requirements of this Part have been met, shall endorse his or her approval on the amended organization certificate and shall cause it to be filed in the office of the [superintendent] <u>Superintendent</u> and with the clerk of the county in which the converting

institution's principal office is located. At the time the conversion from mutual to stock form becomes effective, the converting institution shall cease to be a mutual institution and shall simultaneously become a stock-form institution, and all the property of the mutual institution shall remain as the property of the stock-form institution. All of the rights, powers, franchises, debts, liabilities, obligations and duties of the mutual institution shall continue as such in the stock-form institution and all share interests (in the case of savings and loan associations) and deposits (in the case of savings banks) therein shall remain as deposits of equal value and character of such stock-form institution. The corporate existence of the converting mutual institution shall not terminate, and such converted stock-form institution shall be a continuation of the mutual form institution which existed immediately before the filing of the amended organization certificate.

(d) (1) To the extent consistent with applicable law, a converting institution will be required to make available a list of the names and addresses of all of its eligible account holders to any eligible account holder requesting such list. The eligible account holder requesting such list shall be required to pay the reasonable costs incurred by the converting institution in producing such list. Such list shall not contain any information regarding the amount of deposits or shares held in the accounts of the eligible account holders, except that the converting institution shall be required to disclose the aggregate book value of all such deposits or shares. Such list shall be made available with reasonable promptness so as to permit any eligible account holder to conduct a proxy solicitation of the other eligible account holders in advance of the meeting convened to approve the proposed conversion. Any eligible account holder who requests a list of eligible account holders pursuant to this subdivision shall submit with such request a declaration concerning his or her eligibility to vote on the conversion and a statement indicating the purposes for which the list will be used and shall submit a notarized affidavit, affirmation or similar document attesting that the eligible account holder:

(i) will not use the list for any purpose other than to solicit other eligible account holders with respect to the same solicitation commenced by the thrift;

(ii) will not disclose the information appearing on the list to any person other than an employee or agent of such eligible account holder to the extent necessary to effectuate the communication or solicitation and;

(iii) will return the list and all copies thereof in his or her possession to the converting institution no later than the date of the meeting of eligible account holders, as such date may be postponed or extended.

(2) Subject to the receipt of the items listed in paragraph (1) of this subdivision, the thrift shall respond to any bona fide request for a list of eligible account holders with reasonable promptness and such list shall be complete (unless the eligible account holder has requested a more limited list of eligible account holders) and accurate. The list shall be in the form requested to the extent that such form is available to the thrift without undue burden or expense.

(3) As an alternative to providing a list of eligible account holders, a thrift may at its discretion mail copies of any proxy materials, form of proxy or other solicitation materials furnished by the eligible account holder requesting such list to the other eligible account holders. If the thrift elects to mail these materials itself, it shall notify the eligible account holder requesting the list of such election and provide such eligible account holder with information as to the number of other eligible account holders, or any more limited group of eligible account holders designated by the eligible account holder requesting the list, if available under the thrift's data processing systems. The thrift shall also give the eligible account holder requesting the list the estimated cost of mailing his or her materials. The thrift shall mail such materials to the eligible account holders designated by the requesting eligible account holder with reasonable promptness, but in no event later than 48 hours after delivery of the material to be mailed together with envelopes or other reasonable containers therefor, postage or payment for postage and other reasonable expenses of effecting such mailing; provided, however, that such materials need not be mailed prior to the first day on which solicitation is made on behalf of management of the converting institution. Except for information incorporated by reference to management's own proxy statement, form of proxy or other solicitation materials, neither management of the converting institution nor the converting institution shall be responsible for the content of such materials.

(e) Any proxy solicitation in connection with approval of a plan of conversion pursuant to this Part shall be conducted in accordance with the following:

(1) Except as otherwise provided in section 86.6 of this Part, proxy solicitations subject to this Part may only be conducted by the thrift or an eligible account holder or any person acting on behalf of the foregoing. Notwithstanding the foregoing, any person may finance a proxy solicitation conducted by an eligible account holder; provided that such financing and the nature of the person's interest, if any, in the trans action is disclosed. No person providing financing may engage in any activity that would itself constitute a proxy solicitation or that would amount to a proxy solicitation by an eligible account holder on behalf of that person.

(2) No proxy solicitation subject to this Part shall be made unless each person solicited is concurrently furnished, or has previously been furnished, a written proxy statement on Form 86-PS, the use of which has been approved by the [Banking] Department. Any eligible account holder submitting a proxy statement for review by the [Banking] Department shall do so no less than five business days prior to its intended use.

(3) All additional proxy solicitation materials, including press releases, advertisements, and radio and television scripts, shall be submitted to the [Banking] Department for review at least five business days before their intended use. Proxy solicitation materials approved for use by the [Banking] Department shall be distributed to eligible account holders within 10 days of such authorization unless extended in writing by the [Banking] Department.

(4) The fact that a proxy statement, form of proxy or other proxy solicitation material has been filed with or reviewed by the [Banking] Department and authorized for use shall not be

deemed a finding by the [Banking] Department that such material is accurate or complete or not false or misleading, or that the [Banking] Department has passed upon the merits of or endorsed or recommended any proposal contained therein. No representation contrary to the foregoing shall be made by any person.

(5) All proxy solicitation materials used by or on behalf of an eligible account holder shall include, at a minimum, the name of the eligible account holder soliciting the proxy or on whose behalf the proxy is being solicited, the name of the person(s) soliciting proxies on behalf of such eligible account holder, the length of time he or she has been a depositor or shareholder, and the reasons he or she is making the solicitation. If a proxy solicitation by an eligible account holder is being financed by a third party, such party's identity and interest, if any, in the transaction shall be disclosed.

(6) All proxy solicitation materials used by or on behalf of an eligible account holder shall solicit proxies only for an affirmative or negative vote with respect to the plan of conversion approved by the board of trustees or directors for presentation to eligible account holders and may not confer discretionary authority.

(7) Eligible account holders shall not engage in proxy solicitations at offices of the thrift, except that, if the converting institution is making its proxy solicitation materials available at its offices, it shall give any eligible account holder conducting a proxy solicitation the opportunity to make his or her proxy solicitation materials available at such locations. The converting institution shall display such materials in clearly visible and accessible locations in its offices and shall post a prominent and conspicuous notice of their availability.

(f) A plan of conversion shall contain provisions to the effect that:

(1) The converting institution shall issue and sell its capital stock at a total price equal to the estimated pro forma market value of such stock in the converted institution (plus a control premium, if applicable) based on an independent valuation, as provided in this Part.

(2) An eligibility record date shall be established which date shall be no more than 120 days and no less than 30 days prior to the date on which the board of the converting institution adopts the plan of conversion.

(3) For a period of three years following the effective date of the conversion, no officer, director, trustee (or any person who was an officer, director or trustee at any time after the date on which the board adopts the plan of conversion), or associate of any of them shall, without the prior written approval of the [superintendent]<u>Superintendent</u>, purchase or acquire direct or indirect beneficial ownership of the capital stock of the converted institution, except from a broker or dealer registered with the Securities and Exchange Commission.

(4) The sale price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with section 86.5(c) of this Part.

(5) The conversion must be completed within a specified time period after the date on which the plan of conversion is approved by the [superintendent] Superintendent. The time period shall be not more than 24 months from the date on which the plan of conversion is approved by the [superintendent] Superintendent.

(6) Each time, savings or share account holder of the converting mutual institution shall become a withdrawable time or savings account in the converted stock-form institution equal in withdrawable amount to the withdrawal value of such account in the converting mutual institution.

(7) A liquidation account shall be established and maintained for the benefit of the eligible account holders in the event of a subsequent complete liquidation of the converted institution in accordance with the provisions of subdivision (g) of this section.

(8) The holders of the capital stock of the converted stock-form institution to be issued in connection with the conversion shall have exclusive voting rights, except as may be provided in the organization certificate as amended after the effective date of the conversion.

(9) The plan of conversion adopted by the converting institution's board of directors or trustees may be substantively amended by such board as a result of comments received from regulatory authorities or otherwise prior to the solicitation of proxies from depositors or share holders to vote on the plan of conversion and at any time thereafter with the concurrence of the [superintendent] Superintendent; and the conversion (except a conversion effected pursuant to section 86.6(b) of this Part) may be terminated by such board at any time prior to the meeting of depositors or shareholders called to consider the plan of conversion and at any time thereafter with the concurrence of the [superintendent] Superintendent.

(10) All shares of capital stock of the converting institution purchased or acquired (either directly or indirectly) by directors, trustees or executive officers (as such form is defined by Part 70 of this Title) on original issue in the conversion either directly from the institution (by subscription or otherwise) or from an underwriter (or otherwise beneficially owned by such directors, trustees or executive officers immediately after such original issuance) shall be subject to the restriction that the shares shall not be sold for a period of not less than one year following the date of purchase, except in the event of death or judicial declaration of incompetency of the director, trustee or executive officer.

(11) In connection with shares of capital stock of the converted stock-form institution subject to restriction on resale:

(i) each certificate for such shares shall bear a legend giving appropriate notice of such restriction;

(ii) appropriate instructions shall be issued to the transfer agent for the converted institution's capital stock with respect to applicable restrictions on transfer of any such restricted stock; and

(iii) any shares issued as a stock dividend, stock split or otherwise with respect to any such restricted stock may not be sold until the restrictions respecting such originally restricted stock are terminated, and any certificate for such shares shall bear a legend advising of such restrictions.

(12) The converting institution, and in the case of a conversion calling for the formation of a holding company, such holding company, will restrict the repurchases of its stock and the implementation of stock option and management and employee stock benefit plans as provided in subdivision (h) of this section.

(13) The expenses incurred in the conversion shall be reasonable.

(14) No provision contained in such plan shall be determined by the [superintendent] Superintendent to be inequitable or detrimental to the converting institution, its depositors or shareholders, or to be contrary to the public interest.

(15) The converting institution shall not loan funds or otherwise extend credit to any person for the purpose of purchasing the capital stock of such institution.

(g) Liquidation account. (1) Each converted institution shall, at the time of conversion, establish a liquidation account in an amount equal to at least the amount of net worth (determined in accordance with generally accepted accounting principles) of the converting institution as set forth in its latest statement of financial condition contained in the proxy statement. The function of the liquidation account is to establish a priority on liquidation by providing to eligible account holders rights upon liquidation of the converted institution initially at least equal to the rights that they have to the net worth of the institution if the institution were to be liquidated immediately prior to conversion and, except as provided in paragraph (2) of this subdivision, the existence of the liquidation account shall not operate to restrict the use or application of any of the net worth accounts of the converted institution.

(2) The liquidation account shall be maintained by the converted institution for the benefit of eligible account holders who maintain their accounts in such institution. Each such eligible account holder shall, with respect to each account held, have a related inchoate interest in a portion of the liquidation account balance.

(3) In the event of a complete liquidation of the converted institution (and only in such event), each eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account in the amount of the then-current adjusted subaccount balance for each account of such holder then in the converted institution, before any liquidation distribution may be made with respect to capital stock, except with respect to any preferred

stock issued in exchange for the surrender at the time of the conversion of mutual capital certificates or other net worth certificates which have been issued to its Federal deposit insurer by the institution prior to such conversion. Preferred stock issued in exchange for such certificates may receive distributions in liquidation prior to any distribution to an eligible account holder with respect to the liquidation account to the same extent that the holders of such certificates would have been entitled to priority over the residual rights of depositors or shareholders had the institution not been converted as of the date of liquidation.

(4) The initial subaccount balance for an account held by an eligible account holder shall be determined by multiplying the aggregate opening balance in the liquidation account by a fraction of which the numerator is the amount of deposits or shares in the account of such eligible account holder on the eligibility record date and the denominator is the total amount of deposits or shares owned by all eligible account holders in the converting institution on such date. Such initial subaccount balance shall not be increased, and it shall be subject to downward adjustment as provided in paragraph (e)(5) of this section.

(5) If the deposit or share balance in any account of an eligible account holder at the end of any period for which the converted institution has prepared audited financial statements subsequent to the eligibility record date is less than the lesser of:

(i) the deposit or share balance in such account at the end of any period for which the converted institution has prepared audited financial statements subsequent to the eligibility record date; or

(ii) the amount of the deposits or shares as of the eligibility record date, the subaccount balance for such account shall be adjusted by reducing such subaccount balance in an amount proportionate to the reduction in such deposit or share balance. In the event of such a downward adjustment, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit or share balance of the related account. If any such account is closed, the related subaccount balance shall be reduced to zero.

(h) Restrictions on repurchase of stock; payment of dividends; and use of stock option and management or employee stock benefit plans. Each institution that converts pursuant to this Part shall be subject to the following conditions:

(1) Except with the prior approval of the [superintendent] Superintendent, no converted institution or holding company of a converted institution may repurchase any of its outstanding common stock prior to the first anniversary of the effective date of the conversion. Nor, during the second and third years following conversion, may there be a repurchase in excess of five percent of the holding company's or converted institution's outstanding common stock in any 12-month period without the prior approval of the [superintendent]Superintendent. In determining whether to grant such approval, the [superintendent] Superintendent shall consider:

(i) the financial condition and history of the holding company and/or the converted institution, as the case may be;
(ii) the adequacy of its capital structure;
(iii) its future earnings prospects;
(iv) the quality of its management;
(v) whether such repurchase shall result in fair treatment to the shareholders of the holding company or the converted institution, as the case may be; and
(vi) the public interest generally.

(2) No converted institution shall declare or pay a cash dividend on any of its capital stock if the effect thereof would cause the net worth of the converted institution to be reduced below the amount required to maintain the liquidation account.

(3) For a period of at least one year from the effective date of the conversion, no converted institution shall implement any non-tax-qualified management or employee stock benefit plan or stock option plan unless:
(i) each plan was fully disclosed in the proxy solicitation and stock offering materials;
(ii) the total number of shares of common stock for which options may be granted does not exceed 10 percent of the amount of shares issued in the conversion;
(iii) the aggregate number of shares in management and employee stock benefit plans does not exceed four percent of the amount of shares issued in the conversion;
(iv) no individual shall receive more than 25 percent of the shares of any plan and directors who are not employees of the institution shall not receive more than five percent of the stock individually, or 30 percent in the aggregate, of any plan;
(v) all plans are approved by a majority of the institution's stockholders, or in the case of a holding company formed in connection with the conversion, its stockholders, prior to implementation and no earlier than six months after the conversion;
(vi) the exercise price of options shall be the market price at which the stock is trading at the date of grant; and
(vii) no conversion stock is used to fund management or employee stock benefit plans.

(i) Manipulative and deceptive devices. In connection with the conversion of a thrift to stock form, or the offer, sale or purchase of capital stock issued in connection with such conversion, no institution, any director, officer or trustee thereof, any person soliciting proxies or acting on behalf of any person soliciting proxies in connection with such conversion, or any person seeking to acquire control of such institution, shall:
(1) employ any device, scheme or artifice to defraud;
(2) make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
(3) engage in any act, transaction, practice, or course of business which operated or would operate as a fraud or deceit upon a purchaser or seller of such capital stock.

(j) No person may offer to distribute cash or other valuable consider-

ation to eligible account holders in connection with any conversion other than, with the prior approval of the Superintendent, a supervisory conversion pursuant to section 86.12 of this Part.

(k) Acquisition of the securities of converting and converted institutions. (1) Prior to the completion of a conversion, no person shall offer to transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of the capital stock to be issued in connection with the conversion, except pursuant to or contemplated by the plan of conversion filed with the [superintendent] Superintendent.

(2) Prior to the completion of a conversion, no person shall make any offer, or any announcement of an offer, for any security of the converting institution issued in connection with the conversion nor shall any person knowingly acquire securities of the converted institution issued in connection with the conversion in excess of the maximum purchase limitations established in the institution's approved plan of conversion.

(3) Except with the prior approval of the [superintendent] Superintendent, no person for a period of one year following the date of the completion of the conversion shall directly or indirectly acquire or offer to acquire the beneficial ownership of more than 10 percent of any class of capital stock of an institution converted in accordance with the provisions of this Part. In addition to the provisions of this section, the provisions of article III-A of the Banking Law shall apply to any such acquisition.

(l) Tax opinions and rulings. The [superintendent] Superintendent may refuse to approve any plan of conversion which may in the judgment of the [superintendent] Superintendent result in a taxable reorganization of the converting institution under the Internal Revenue Code of 1954, as amended.

(m) Consents of experts. If any accountant, attorney, investment banker, appraiser, or other person whose professions give authority to a statement made in any document filed under this Part is named as having prepared, reviewed, passed upon, or certified any part thereof, or any report or valuation for use in connection therewith, the written consent of such person shall be filed with the application for conversion. If any portion of a report of an expert is quoted or summarized as such in any filing, the written consent of the expert shall expressly state that the expert consents to such use. All written consents filed pursuant to this subdivision shall be dated and signed manually. A list of such consents shall be filed with the application for conversion. Where the consent of the expert is contained in his report, a reference shall be made in the list to the report containing such consent.

§ 86.5 **Public offering of capital stock in connection with the conversion of mutual thrift institutions to stock-form**

(a) A plan of conversion (except to the extent governed by inconsistent provisions of section 86.6 or by section 86.12 of this Part) shall, in addition to the requirements of

section 86.4 of this Part, contain provisions to the effect that:

(1) (i) Each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase capital stock of the converting institution in an amount no less than the maximum purchase limitation established for the public offering under paragraph (3) of this subdivision. In the event of an oversubscription for such shares, after shares have been allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase 100 shares, shares shall be allocated among subscribing eligible account holders on such equitable basis, related to the amounts of their respective accounts, as may be provided in the plan of conversion.

(ii) Subscription rights to purchase capital stock received by officers, directors, trustees, and their associates, of the converting institution based on their increased deposits or shares in the converting institution in the one-year period preceding the eligibility record date shall be subordinated to all other subscription rights to purchase shares of capital stock granted pursuant to this Part.

(iii) The provisions of subparagraph (i) of this paragraph notwithstanding, a plan of conversion may contain a provision that gives the tax-qualified employee stock benefit plans of the converting institution (and, where applicable, a holding company formed in connection with its conversion to stock form) subscription rights to purchase up to 10 percent of the shares to be issued by the converting institution, and which subordinates the subscription rights of eligible account holders to those of such tax-qualified employee stock benefit plans.

(2) Management of the converting institution collectively shall not be entitled to purchase more than 25 percent of the capital stock issued by the converting institution in a public offering of such stock, and no person (alone, or acting together with any other person or in concert with any group of persons) shall be entitled to purchase more than five percent of such stock in such public offering. Any shares of capital stock purchased pursuant to the exercise of subscription rights shall be included with the shares purchased in a public offering for purposes of determining if the above-described 25 percent and 5 percent limitations have been violated. As used in this section, the term management shall refer to directors or trustees and executive officers; provided, however, that such persons shall not be deemed to be acting together or in concert solely as a result of their board membership or employment.

(3) Any shares of the converting institution not sold to depositors or shareholders with subscription rights shall be sold in a public offering through an underwriter, or otherwise in whole or in part to the public without an underwriter, subject to the converting institution demonstrating to the [superintendent]<u>Superintendent</u> the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. Such conditions shall include, but not be limited to:

(i) a condition limiting purchases in the public offering by any person together with any associate or group of persons acting in concert to an aggregate of no more than five percent of the total amount of shares offered;

(ii) a condition requiring the stock to be offered and sold in the public offering to be offered and sold in a manner that will achieve a reasonably wide distribution of such stock.

(4) The converting institution shall:

(i) promptly following the conversion register the capital stock issued in connection therewith pursuant to the Securities Exchange Act of 1934 and undertake not to deregister such capital stock for a period of three years after such registration;

(ii) use its best efforts to encourage and assist a market maker to establish and maintain a market for the capital stock issued in connection with the conversion; and

(iii) use its best efforts to list the shares of capital stock issued in connection with the conversion on a national or regional securities exchange or on the NASDAQ quotation system.

(5) The notice of meeting, proxy card, and proxy statement or short-form proxy statement sent to each eligible account holder as required by section 86.4(a)(3) of this Part shall be accompanied by a subscription offering circular and subscription order form. Separate and readily distinguishable postage-paid envelopes shall be provided for the return of proxy cards and subscription order forms.

(b) A plan of conversion providing for the public offering of the capital stock of a converting institution may contain provisions to the effect that:

(1) Shares of the converting institution not sold in the subscription offering or in a public offering pursuant to this section not exceeding one percent of the aggregate shares issued, may be sold in such other manner as provided in the plan of conversion.

(2) Any person exercising subscription rights to purchase capital stock shall be required to purchase a minimum of 25 shares to the extent such shares are available for purchase. In no event shall the aggregate price for any minimum purchase of shares exceed $500.

(3) Instead of a separate subscription offering, all subscription rights issued in connection with the conversion shall be exercisable by delivery of properly completed and executed order forms to the underwriters or selling group for the public offering. Orders for stock in the public offering shall not be filled until after orders of persons exercising subscription rights have been filled.

(4) The converting institution shall not be required to issue subscription rights to, or accept orders for the purchase of shares of capital stock from, persons who are residents of a foreign country.

(c) Pricing and sale of capital stock. (1) No offer to sell capital stock of a converting institution pursuant to a plan of conversion providing for a public offering may be made prior to approval by the [superintendent] Superintendent of the application for conversion and until the preliminary offering circular has been authorized for use by the [superintendent] Superintendent. No sale of capital stock may be made except by means of a final offering circular which has been approved by the [superintendent] Superintendent. The provisions of this paragraph shall not apply to preliminary negotiations or agreements between a converting institution and any underwriter or among underwriters who are to be in privity of contract with the converting institution.

(2) Any preliminary offering circular which has been authorized for use by the superintendent]Superintendent may be distributed in connection with the offering at the same time as, or after, the proxy statement is mailed to depositors or shareholders pursuant to this Part. No final offering circular shall be distributed until it has been approved by the superintendent. The approval of the final offering circular by the superintendent shall not extend beyond the maximum time period specified for the completion of the sale of all the capital stock in subdivision (e) of this section, or beyond such period of time as the [superintendent] Superintendent shall establish upon a subsequent approval in the event of the granting of an extension of time under subdivision (g) of this section.

(3) If the subscription offering is to commence prior to the meeting of the depositors or shareholders held to vote on the plan of conversion, the proxy statement authorized for use by the [superintendent] Superintendent shall set forth the estimated price range. Any preliminary offering circular shall set forth the estimated price range. The maximum of such price range should normally be no more than 15 percent above the average of the minimum and maximum of such price range and the minimum should normally be no more than 15 percent below such average. The maximum price used in the price range should be no more than $40 per share and the minimum no less than $5 per share.

(4) The materials relating to the pricing of the capital stock referred to in paragraph (6) of this subdivision shall be delivered to the [superintendent] Superintendent before he approves the plan of conversion. The [superintendent] Superintendent will review the price information in determining whether to approve an application for conversion when the offering is to commence prior to the meeting of depositors or shareholders, and will review such information in determining whether to approve the final offering circular.

(5) Underwriting commissions shall not exceed an amount or percentage per share acceptable to the [superintendent]Superintendent. No underwriting commissions shall be allowed or paid with respect to shares of capital stock sold in the subscription offering, unless the plan of conversion contains the provision permitted by paragraph (b)(4) of this section; provided, however, that an underwriter may be reimbursed for reasonable expenses actually incurred in connection with the subscription offering where the public offering is so small that reasonable underwriting commissions thereon would not be sufficient to cover total expenses reasonably incurred by the underwriter.

(6) The pricing information required under paragraph (4) of this subdivision shall comply with the following guidelines:

(i) The materials shall be prepared by persons independent of the converting institution, experienced and expert in the area of corporate appraisal, and acceptable to the [superintendent]Superintendent.

(ii) The materials shall contain a full appraisal, including a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein.

(iii) To the extent that the appraisal is based on a capitalization of the pro forma income of the converted institution, the materials must indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on comparison of the capital stock of the converting institution with outstanding capital stock of existing stock-form thrift institutions, such existing stock institutions must be reasonably comparable to the converting institution in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.

(7) In addition to the information required in paragraph (6) of this subdivision, the converting institution shall submit information demonstrating to the satisfaction of the [superintendent]Superintendent the independence and expertise of any person preparing materials under this paragraph. However, a person will not be considered as lacking independence for the reason that such person will participate in the effecting a sale of capital stock under the plan of conversion or will receive a fee from the converting institution for services rendered in connection with such appraisal.

(8) In addition to the information required in paragraphs (6) and (7) of this subdivision, the converting institution shall file with the [superintendent] Superintendent such additional information with respect to the pricing of the capital stock of the institution as the [superintendent] Superintendent may request, including, without limitation, a full appraisal.

(d) Order forms for subscriptions. (1) After receiving the approval of the [superintendent] Superintendent of its plan for conversion, a converting thrift shall submit said plan to its eligible account holders as provided in section 86.4 of this Part by mailing to each eligible account holder a notice, proxy card and proxy statement or short-form proxy statement conforming to the requirements of section 86.14 of this Part.

(2) Except as provided in paragraph (a)(5) of this section, subscriptions for shares shall be accepted from eligible account holders only to the extent that such holders have (i) executed and delivered in person or by mail a purchase order in such form as the converting institution shall prescribe, and (ii) accompanied such order with payment (either direct or by authorizing withdrawal from a share or deposit account). In the event that subscriptions are cancelled by the converting institution for any lawful reason, payments for the same shall be promptly refunded.

(3) Each order form shall be accompanied or preceded by an offering circular for the subscription offering or the public offering, as the case may be, and a set of detailed instructions explaining how to properly complete such order forms.

(4) The maximum subscription price stated on each order form shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the offering circular. If

either the maximum subscription price or the actual subscription price is not within the subscription price range stated in the offering circular, the converting institution must obtain specific approval as to such price from the [superintendent] Superintendent. If appropriate, the [superintendent] Superintendent will condition his approval by requiring a resolicitation of proxies and/or order forms. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(5) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear and intelligible a manner as possible, the actions which are required or available to him with respect to the form and the capital stock offered for purchase thereby. Specifically, each order form shall:

(i) indicate the maximum number of shares that may be purchased pursuant to the subscription rights;

(ii) indicate the period of time within which the subscription rights must be exercised, which period of time shall be no less than 20 days and no more than 45 days following the mailing of the subscription order form;

(iii) state the maximum subscription price per share of capital stock;

(iv) indicate any requirements as to the minimum number of shares of capital stock which may be purchased;

(v) provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the eligible account holder wishes to purchase;

(vi) indicate the manner of required payment and, if such payment may be made by withdrawal from a certificate of deposit, indicate whether such withdrawal may be made without penalty. If payment is to be made by withdrawal from an account or certificate of deposit, a box to check should be provided;

(vii) provide specifically designated blank spaces for dating and signing the order form;

(viii) contain an acknowledgment by the eligible account holder or other person signing the order form that he has received an offering circular prior to so signing; and

(ix) indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are nontransferable and will become void at the end of the subscription period. The order form may, and the instructions thereto shall, indicate the place or places to which the order forms are to be returned and when the order forms shall be deemed to be received by the converting institution.

(6) The order form may provide that it may not be modified without the converting institution's consent after its receipt as set forth in the order form. If payment is to be made by withdrawal from an account or certificate of deposit, the converting institution may, but need not, cause such withdrawal to be made upon receipt of the order form. If such withdrawal is made at any time prior to the closing date of the public offering, the converting institution shall pay interest to the eligible account holder on the amount withdrawn as if such amount had remained in the account from which it was withdrawn until such closing date.

(e) Period for completion of sale. The sale of all shares of capital stock of the converting insured institution to be made under the plan of conversion shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period unless extended by the [superintendent] Superintendent.

(f) Interest on subscriptions. The converting institution shall pay interest at not less than the passbook rate on the amounts paid to the institution to purchase shares of capital stock in the subscription offering from the date payment is received by the institution until the conversion is completed or terminated.

(g) Extension of time to complete public offering. (1) The [superintendent] Superintendent may grant one or more extensions of the time required to complete the sale of all shares of capital stock under subdivision (e) of this section, provided that no single extension of time shall exceed 60 days.

(2) Immediately upon granting of an extension of time pursuant to paragraph (1) of this subdivision, the converting institution shall distribute to each subscriber in the offering a notice of the extension of time, and of the right of each subscriber to increase, decrease or rescind the subscription at any time prior to 20 days before the end of the extension period or at any time prior to the date of the commencement of the public offering.

(3) After the expiration of the subscription period, the converting institution shall file with the [superintendent] Superintendent, for his approval, a notice to be delivered to subscribers upon the occurrence of any event, circumstance, or change of circumstance which would be material to the investment decision of a subscriber. Any such notice distributed to subscribers shall grant to each subscriber the right to increase, decrease or rescind his subscription for a period which shall be no less than the greater of 10 days from the date of the mailing of such notice or the period remaining in an extension of time granted by the superintendent pursuant to and subject to the provisions of this subdivision.

86.6 **Sale of control in connection with the conversion of mutual thrift institutions to stock-form**

(a) Pursuant to the provisions of this subdivision and of section 86.4 of this Part, a mutual thrift institution having net worth (determined in accordance with generally accepted accounting principles) of less than three percent of assets as of the end of the most recent period for which such institution has prepared audited financial statements, or which received net worth assistance from its Federal deposit insurer within the 12-month period ending on the date on which the application for conversion was filed with the [superintendent] Superintendent, may seek approval to convert to stock form pursuant to a plan of conversion which provides for the sale of its capital stock to a person or persons who will be in control of such institution upon the purchase of such capital stock. Such

institution shall be required to retain a reputable financial advisor of national standing with expertise in valuing financial institutions to advise it as to the fairness of the consideration to be paid by the proposed acquiror. The financial advisor shall furnish a written opinion specifically informing the converting thrift institution as to the fairness from a financial point of view to the converting institution of the proposed consideration. Such written opinion shall specifically disclose in reasonable detail:

(1) the professional standards employed by the financial advisor in arriving at its conclusions; and

(2) the factual basis upon which such conclusions were reached. The opinion shall specifically state whether or not the financial advisor, in arriving at its conclusions as to the fairness of the proposed consideration has made efforts to determine whether, in its judgment, there is the reasonably significant probability that financially able purchasers of the character generally capable of securing regulatory approval other than the proposed acquiror, given an opportunity, might have made good faith offers to purchase control of the converting institution for a consideration materially greater than that proposed to be paid by the proposed acquiror, and has compared the consideration to be paid by the proposed acquiror with the consideration paid in the purchase of other thrift institution of comparable size, market area, profit history, competitive conditions and projected future earnings. If the financial advisor has made any such efforts or any such comparisons, the nature and scope of such efforts and comparisons shall be discussed in detail. The written opinion shall state whether and on what basis the financial advisor believes that the consideration to be paid by the proposed acquiror exceeds the aggregate amount of net proceeds which the converting institution could have realized if the capital stock to be sold to the proposed acquiror has been sold in a subscription offering followed by an underwritten public offering. The written opinion shall be delivered to the [Banking] Department before any approval of the application for conversion will be granted by the superintendent.

(b) A mutual thrift institution which does not qualify for a conversion pursuant to subdivision (a) of this section may seek approval to convert to stock-form pursuant to a plan of conversion in which one or more persons will acquire control of such converting institution pursu ant to the provisions of this subdivision and of section 86.4 of this Part. After such mutual institution has filed an application for conversion pursuant to the provisions of this Part, any competing offeror may file with the [superintendent] <u>Superintendent</u> a plan of conversion providing for the purchase of control (wherein the same percentage of the aggregate capital stock of the converting institution proposed to be purchased pursuant to the plan of conversion adopted by the converting institution will be purchased by the competing offeror) as an alternative to the plan of conversion filed by the converting institution. If such plan is approved by the [superintendent] <u>Superintendent</u>, and if the [Banking Board] approval <u>of the Superintendent</u> referred to in paragraph (c)(1) of this section is obtained, then such competing offeror may present its plan of conversion to a vote of the depositors or shareholders at any meeting thereof called by management of the converting institution to vote upon the plan of conversion proposed by the converting institution. Upon approval by at least 75 percent of the total votes of the converting institution's depositors

or shareholders represented in person or by valid proxy at such meeting, a competing offeror's plan of conversion will be adopted by the converting institution, and shall be binding on the institution and the competing offeror.

(c) The provisions of section 86.4 of this Part shall apply to any application for conversion which a competing offeror proposes to submit to a meeting of depositors or shareholders, except that:

(1) No application for conversion of a competing offeror shall be accepted for filing by the [superintendent] Superintendent unless it is filed with the [superintendent] Superintendent within 10 days of the date that notice of approval of management's plan for conversion is approved by the [superintendent] Superintendent is made public in the form referred to in section 42 of the Banking Law.

(2) As soon as practicable, on the date that the competing offer is delivered to the [superintendent] Superintendent, the competing offeror shall hand-deliver a copy of such application, including all exhibits thereto, to the converting institution at its principal office, to the proposed acquiror, and to any other competing offeror which has filed an application for conversion pursuant to subdivision (b) of this section, at such competing offeror's principal executive offices.

(d) In the event that such converting institution shall receive notice of any competing offers to purchase control of such institution, within the 10-day period referred to in subdivision (c) of this section, such institution shall give notice of such competing offers to its depositors or shareholders as soon as possible.

(e) The acceptance for filing by the [superintendent] Superintendent of an application for conversion of a competing offeror shall, without further action on the part of the converting institution, extend the date for the holding of the meeting of depositors or shareholders called to approve the plan of conversion approved by management of the converting institution to a date 70 days following the date on which notice of such meeting is or was first given, unless such date falls on a weekend or legal holiday, in which case such meeting shall be held on the next business day. The notice to depositors or shareholders referred to in subdivision (d) of this section shall inform such depositors or shareholders of the revised date (and if applicable, the revised time and location) of such meeting.

(f) Upon filing with the [superintendent]Superintendent of an application for conversion by a competing offeror, management of the converting institution shall not, without the prior written approval of the [superintendent] Superintendent, further extend or cancel or otherwise terminate the meeting of depositors or shareholders called to vote upon any plan of conversion.

(g) If any competing offeror notifies the converting institution of such competing offeror's intention to present an alternative plan of conversion at the meeting of depositors or

shareholders called to vote on the plan of conversion approved by management of the institution, the converting institution shall identify and provide the information required by a short-form proxy statement with respect to the competing offeror's plan of conversion in management's form of proxy and the converting institution's proxy statement. Notwithstanding the foregoing, the converting institution shall not be required to include such information regarding the competing offeror's proposal in the management's form of proxy and proxy statement unless the competing offeror has complied with the following requirements of this subdivision:

(1) The competing offeror shall submit its proposal in writing to the converting institution within 20 days of the date on which the converting institution files its application for conversion with the superintendent.

(2) Prior to the date on which a competing offeror's submission is made to the converting institution, the competing offeror shall have (i) filed with the [superintendent] Superintendent all of the materials required to be filed by this section and section 86.4 of this Part, and (ii) delivered copies of all of such materials to the converting institution. The converting institution shall not be required to present the competing offeror's plan of conversion at the meeting of depositors or shareholders unless the [superintendent] Superintendent has given his prior written approval of such plan of conversion.

(h) The competing offeror's plan of conversion may be presented at the meeting of depositors or shareholders of the converting institution either by the competing offeror or its representative who is qualified under applicable law to make such presentation on the competing offeror's behalf at the meeting. In the event that the competing offeror or its representative fails to present the competing offeror's proposal for action at the meeting, the converting institution shall not be required to make such presentation.

(i) If the management of the converting institution has adopted a plan of conversion pursuant to subdivision (b) of this section, the converting institution shall perform such of the following acts as may be duly requested in writing with respect to a competing offeror's plan of conversion by a competing offeror who will defray the reasonable expenses to be incurred by the converting institution in the performance of the act or acts requested:

(1) The converting institution shall mail or otherwise furnish to such competing offeror the following information as promptly as practicable after receipt of such request:

(i) a statement of the approximate number of depositors or shareholders of the converting institution who have been or are to be solicited on behalf of the management, or any group of such depositors or shareholders which the competing offeror shall designate;

(ii) if the converting institution has made or intends to make, through brokers or nominees or other persons, any solicitation of beneficial owners of deposits, a statement of the approximate number of such beneficial owners, or any group of such owners which the competing offeror shall designate; and

(iii) an estimate of the cost of mailing a specified proxy statement, form of proxy, or other communications to such depositors or shareholders of the converting institution.

(2) Copies of any proxy statement, form of proxy, or other communication furnished by the competing offeror and approved by the superintendent shall be mailed by the converting institution to such of the depositors or shareholders specified in subparagraph (1)(i) of this subdivision as the competing offeror shall designate. The converting institution shall also mail to each broker, nominee, or other person specified in subparagraph (1)(ii) of this subdivision a sufficient number of copies of such proxy statement, form of proxy, or other communications as will enable the broker, nominee, or other person to furnish a copy thereof to each beneficial owner solicited or to be solicited through him. The competing offeror shall pay the estimated costs of mailing the above-described materials before such materials are mailed, and the converting institution shall promptly repay to the competing offeror any estimated amounts paid in excess of the actual costs of such mailing.

(3) Any such material which is furnished to the converting institution by the competing offeror shall be mailed with reasonable promptness by the converting institution after receipt of the material to be mailed, envelopes, or other containers therefor, and postage or payment for postage; provided, however, that such material need not be mailed prior to the first day on which solicitation is made on behalf of management of the converting institution. Except for information incorporated by reference to management's own proxy statement, form of proxy or other communication, neither management of the converting institution nor the converting institution shall be responsible for the proxy statement, form of proxy or any other communication mailed on behalf of a competing offeror.

(j) In lieu of performing the acts specified in subdivision (i) of this section, the converting institution may, at its option, if not prohibited by applicable law, furnish promptly to the competing offeror a reasonably current list of the names and addresses of the depositors or shareholders of the converting institution specified in subparagraph (i)(1)(i) of this section as the competing offeror shall designate, and a list of the names and addresses of such of the brokers, nominees or other persons specified in subparagraph (i)(1)(ii) of this section as the competing offeror shall designate together with a statement of the approximate number of beneficial owners solicited or to be solicited through each such broker, nominee or other person, and a schedule of the handling and mailing costs of each such broker, nominee, or other person, if such schedule has been supplied to the converting institution. The foregoing information shall be furnished promptly upon the request of the competing offeror or at reasonable intervals as it becomes available to the converting institution.

(k) No solicitation of proxies in connection with a conversion pursuant to this section shall be made unless the person so solicited is concurrently furnished with or has been previously furnished with a proxy statement or a short-form proxy statement complying with section 86.14 of this Part. In the event that the persons to whom capital stock is offered or sold pursuant to a conversion effected in compliance with the section shall exceed 20 in number, each of such persons shall be furnished with an offering circular complying with section 86.15 of this Part prior to the consummation of any such sale.

(l) In the case of a proposed conversion pursuant to this section, the converting institution, together with the proposed acquiror, shall file with the [superintendent] Superintendent an application containing the information applicable to acquisitions of control of banks and trust companies under Supervisory Procedure CB 105 or CB 117 of this Title, as applicable. Such application, together with the [superintendent's] Superintendent's recommendation thereon, shall be submitted to the [Banking Board] Superintendent, [which] who shall grant or deny the application in accordance with the applicable provisions of article III-A of the Banking Law, except that the [Banking Board] Superintendent shall grant or deny such application within 60 days of the date on which the application for conversion is filed with the [superintendent] Superintendent.

(m) In any conversion effected pursuant to the terms of this section the eligible account holders of such converting mutual institution shall receive the subscription rights discussed in section 86.5 of this Part to purchase any shares of capital stock issued in connection with the conversion not purchased by the proposed acquiror or the competing offeror. Any such shares not purchased by the proposed acquiror and not subscribed for by the depositors or shareholders of the converting institution shall be sold pursuant to the provisions of section 86.5 of this Part.

(n) Any conversion in which a mutual institution merges into an existing stock-form institution or becomes a subsidiary of an existing holding company, and in which eligible account holders receive the right to purchase shares of the acquiror, shall be governed by the provisions of this section.

§ 86.7 **Applicability of certain provisions of the Banking Law to stock- form savings banks**

(a) The provisions of the following sections of the Banking Law shall have no applicability to stock-form savings banks:
(1) Section 23--Acceptance or rejection of certificate; investigation fees (to the extent that it shall require the payment of an investigation fee other than the fee payable under Banking Law, section 14-e[**2**]).
(2) Section 230--Incorporation; organization certificate.
(3) Section 231--(Reserved).
(4) Section 232--Organization certificate to be submitted to superintendent; proof of publication and service of notice of intention.
(5) Section 233 -- When corporate existence begins; conditions precedent to commencing business.
(6) Section 234(1)--General powers (only insofar as said provision authorizes the payment of "dividends" on deposit accounts).
(7) Section 234(2)--General powers (only relative to contributions of mutual incorporators or trustees).
(8) Section 243--Surplus fund.
(9) Section 244--Earnings; how and when to be computed; transfers to surplus fund; undivided profits available for dividends (excluding definition of "net worth").

(10) Section 245--Interest payments.
(11) Section 246--Board of trustees; number; vacancies; qualifications; oath and declaration.
(12) Section 246-a--Executive committee and other committees.
(13) Section 247--Restrictions upon trustees and officers.
(14) Section 248--Removal and forfeiture of office of trustee.
(15) Section 249--Compensation of trustees and officers.
(16) Section 250--Pensions; insurance.
(17) Section 251--Meetings; quorum; bylaws; officers.

(b) In addition to such other requirements of law and regulations imposed upon savings banks, stock-form savings banks shall be subject to the following sections of the Banking Law, to the same extent as banks and trust companies referred to therein, and any reference in such sections to a bank or trust company shall be deemed to refer also to a stock-form savings bank:
(1) Section 103(8)--Restrictions on loans, purchases of securities and total liabilities to bank or trust company of any one person.
(2) Section 109--Closing of books; profits; how to be computed.
(3) Section 110--Surplus fund; of what composed; and for what purpose used.
(4) Section 111--Profits; credits to surplus fund and to undivided profits.
(5) Section 112--Dividends; payable from net profits; restrictions.
(6) Section 130--Restrictions on officers, directors and employees.
(7) Section 140-a--Stock option plans.

§ 86.8 **Applicability of certain provisions of the Banking Law to stock- form savings and loan associations**

(a) The provisions of the following sections of the Banking Law shall have no applicability to stock-form savings and loan associations:
(1) Section 23-Acceptance or rejection of certificate; investigation fees (to the extent that it shall require the payment of an investigation fee other than the fee payable under Banking Law, section 14-e(2)).
(2) Section 375-Incorporation; organization certificate.
(3) Section 376-Proposed bylaws.
(4) Section 377-When corporate existence begins.
(5) Section 378-Power to issue shares; dues thereon (only to the extent that deposit accounts are denominated therein as share accounts).
(6) Section 385-Surplus account.
(7) Section 386-Profits; how and when to be computed.
(8) Section 387-Credits to surplus account and undivided profits; dividends to shareholders.
(9) Section 388-Fines and penalties for failure to make payments on installment shares.
(10) Section 389-Matured shares; conversion into shares of another class upon notice.

(11) Section 390(1, 2, 3, 4, 6)-Withdrawal of unpledged shares, provisions for dividends.
(12) Section 392-Retirement of shares; suspension; transfer.
(13) Section 397-Number, qualifications and disqualifications of directors; oath; quorum; meeting of directors.
(14) Section 398-Filling of vacancies in board of directors; change in number of directors.
(15) Section 398-a-Forfeiture of office of director.
(16) Section 398-b-Duties of directors and officers.
(17) Section 398-c-Executive committee and other committees.
(18) Section 399-Restrictions on directors and officers.
(19) Section 400-Pensions; insurance.
(20) Section 402-Amendment of articles of association and by-laws; application to supreme court.
(21) Section 405-Annual report to shareholders; delivery and publication.
(22) Section 406-Charters conformed to this article; obligations and rights unimpaired; saving clause.

(b) In addition to such other requirements of law and regulations imposed upon savings and loan associations, stock-form savings and loan associations shall be subject to the following sections of the Banking Law, to the same extent as banks and trust companies referred to therein and any reference in such sections to a bank or trust company shall be deemed to refer also to a stock-form savings and loan association:
(1) Section 103(8)-Restrictions on loans, purchases of securities and total liabilities to bank or trust company of any one person.
(2) Section 109-Closing of books; profits; how to be computed.
(3) Section 110-Surplus fund; of what composed; and for what purposes raised.
(4) Section 111-Profits; credits to surplus fund and to undivided profits.
(5) Section 112-Dividends; payable from net profits; restrictions.
(6) Section 130-Restrictions on officers, directors and employees.
(7) Section 140-a-Stock option plans.

§ 86.9 **Formation of a holding company in connection with the conversion of a mutual institution to stock form**

The board of trustees or directors, as the case may be, of a thrift seeking to convert to stock form may cause a company to be formed to acquire all the stock of such converting institution. In such case, the converting institution shall file with its application for conversion detailed information as to the formation of such holding company (including specific details as to the rights of depositors or shareholders of such mutual institution to subscribe for stock of such holding company) as well as the proxy statement or short-form proxy statement complying with the provisions of section 86.14 of this Part. In addition, the thrift institution shall, as a condition of the [superintendent's] Superintendent's approval of the institution's conversion from mutual to stock form, file with the [superintendent] Superintendent a copy of (a) any prospectus of such holding company as it shall be required to prepare under applicable State and Federal securities laws, and (b) any application for approval to become a

bank holding company or savings and loan holding company as it shall be required to file under applicable Federal law. Unless clearly inapplicable, all of the requirements of this Part shall apply to a conversion under this section.

§ 86.10 **Limitations on certain acquisitions of control of stock-form thrift institutions**

An organization certificate of a converting thrift may contain provisions, the effect of which would be to prohibit the acquisition of control of the converted stock-form thrift institution for a period not exceeding three years from the effective date of the conversion from mutual to stock-form.

§ 86.11 **Conflict between State and Federal law and regulation**

In the event that any converting institution or other person subject to the provisions of this Part shall find that it cannot either absolutely or without undue hardship comply with the provisions of this Part and at the same time satisfy the requirements of any State or Federal law or any regulation promulgated by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, Securities and Exchange Commission or any other regulatory agency as may have jurisdiction over any person or transaction referred to herein, such converting institution or other person may request a waiver of such conflicting provision from the [superintendent] Superintendent, which the [superintendent] Superintendent may grant for good cause after considering the declaration of policy in section one of chapter one of the Laws of 1984.

§ 86.12 **Supervisory stock conversions**

Notwithstanding any other provision of this Part, where the [Superintendent]Superintendent has determined that grounds exist for him to take possession of the business and property of a mutual thrift institution, in that such institution:

(a) is or will in the immediate future be unable to meet its obligations;

(b) is or otherwise would be in an unsafe and unsound condition;

(c) cannot with safety and expediency continue business;

he may authorize the institution to convert to stock-form and to effect a sale or other transfer of its capital stock to a third party or parties in a transaction in which the converting institution's depositors or shareholders have no right of approval or right to subscribe for shares to be issued by the converting institution. In determining whether to authorize such a transaction, the [superintendent] Superintendent shall take into consideration the declarations of policy contained in section 10 of the Banking Law and section 1 of chapter 1 of the Laws of 1984. Upon approval of such a transaction, the [superintendent] Superintendent shall file the converted institution's amended organization certificate with the same force and effect as provided in section 86.4(c) of this Part.

§ 86.13 **Application for conversion**

A converting institution shall be required to file with the supeintendent an application for conversion which complies with Form 86-AC, which reads in its entirety as follows:

Form 86-AC
(Facing Sheet)
NEW YORK STATE [BANKING] DEPARTMENT OF FINANCIAL SERVICES
[2 Rector Street] One State Street
New York, New York 1000[6]4
Application for Conversion

_____
(Exact name of Converting Institution as specified in charter)

_____
(Street address of Converting Institution)

_____
(City, State and ZIP Code)

_____
Date of Application

General Instructions

A. Rules as to Use of Form 86-AC

Form 86-AC shall be used by any thrift institution seeking New York State [Banking] Department of Financial Services approval to convert from mutual to the stock-form pursuant to Part 86 of the General Regulations of the Banking Board.

Item 1. Form of Application.

Set forth an application for approval of the plan of conversion in the following form with the names and titles of the officers and directors or trustees signing the application indicated below their signatures:

The undersigned hereby makes application for approval to convert from a mutual thrift institution into a stock-form thrift institution, and submits herewith a statement of its proposed plan of conversion and other information and exhibits as required by Part 86 of the General Regulations of the Banking Board.

This application has been approved by at least a majority of the board of directors or trustees of the converting institution. The undersigned officers and members of the board of directors or trustees severally represent (i) that each such person has read this application, (ii) that in the opinion of each such person, he or she has made such examination and investigation as is necessary to enable him or her to express an informed opinion that this application complies to the best of his or her knowledge and belief with the applicable requirements of this Part, and (iii) that each such person holds such informed opinion.

ATTEST:

Name of Converting Institution

_____
Secretary

By _____
President

_____
(Principal Executive Officer)

_____
(Principal Executive Officer)

_____
(Director or Trustee)
(Signatures of at least a majority of the Board of Directors or Trustees)

_____
(Director or Trustee)

_____
(Director or Trustee)

_____
(Director or Trustee)

_____
(Director or Trustee)

_____
(Director or Trustee)

Item 2. Plan of Conversion.
Furnish the complete formal written plan adopted by the board of directors or trustees for conversion of the mutual institution to the stock-form of organization. The terms of the plan submitted pursuant to this Item will be a basis for the Superintendent's approval and the plan as approved will be distributed as an attachment to the proxy statement and the offering circular as provided in Part 86.

Item 3. Proxy Statement and Offering Circular.
Furnish copies of the proxy statement and offering circular. The proxy statement and offering circular should be prepared in accordance with Forms 86-PS and 86-OC, respectively.

Item 4. Form of Proxy.
Furnish preliminary copies of the form of proxy to be distributed to Eligible Account Holders by the management.

Item 5. Sequence and Timing of the Plan.
Set forth the expected chronological order of the events connected with the plan of conversion beginning with the filing of this application through completion of the sale of all the capital stock to be issued pursuant to the plan. Indicate the expected timing of any requisite approvals of Federal authorities. Indicate the proposed timing of all aspects of the subscription offering. If there will be an underwritten public offering of the capital stock as part of the plan of conversion, indicate the proposed timing of all aspects of such offering.

Item 6. Record Dates.
If the converting institution's plan of conversion contains an eligibility record date earlier than 90 days prior to the date of adoption of the plan of conversion by the board of directors or trustees, state the reason for the selection of such earlier date.
Item 7. Expenses Incident to the Conversion.
Provide in substantially the tabular form indicated below the estimated expenses of the conversion to be incurred by the converting institution.

Legal$
Postage and Mailing
Printing
Escrow or Agent Fees
Underwriting Fees
Appraisal Fees
Transfer Agent Fees
Auditing and Accounting
Proxy Solicitation Fees
Advertising
Other Expenses
_____
Total $

Instructions: 1. The converting institution may exclude costs represented by salaries and wages of regular employees and officers, if a statement to that effect is made. The cost of solicitation by specially engaged employees or paid solicitors under paragraph (b) of Item 3 of Form 86-PS shall be stated under "Proxy Solicitation Fees" in this Item.

2. If the converting institution has any category of expense exceeding $10,000 which is not specified in this Item, such expenses shall be itemized rather than including it under the category "Other Expenses".

3. If the solicitation is conducted other than by management of the converting institution, the information required in this Item shall be provided with respect to the cost of such solicitation.

Item 8. Indemnification.
State the general effect of any charter provision, bylaw, contract, arrangement, statute or regulation to be in effect during or after the conversion under which any underwriter, appraiser, lawyer, accountant or expert, or director, officer, or trustee of the converting institution will be insured or indemnified in any manner against any liability which he may incur in his capacity as such.

EXHIBITS

The following exhibits shall be attached to this Form.

Exhibit 1. Resolution of Board of Directors or Trustees.

Set forth a certified copy or copies of a resolution or resolutions of the board of directors or trustees (1) adopting the plan of conversion filed with this application; (2) authorizing the filing of this application; and (3) applying for continued insurance of accounts by its Federal deposit

insurer. The action adopting the plan of conversion and authorizing the filing of this application must be approved by a majority of the board of directors or trustees.

Exhibit 2. Copies of Documents, Contracts and Agreements.

Furnish the following documents, contracts and agreements: (a) proposed certificates for capital stock to be issued; (b) proposed order forms with respect to the subscription rights; (c) any proposed management employment contracts; (d) any contract described in response to Item 6(e) of Form 86-PS; (e) contracts or agreements with paid solicitors described in response to Item 3(b) of Form 86-PS; (f) any material loan agreements relating to borrowings by the converting institution other than subordinated debt securities approved by the Superintendent;

(g) any appraisal agreement or proposed agreement, underwriting contract or agreements among underwriters; (h) any required undertakings or affidavits by officers, trustees or directors purchasing shares in the conversion that they are acting independently; and (i) any agreements for the making of markets or the listing on exchanges of the stock of the converted institution. Documents, contracts and agreements which are furnished in proposed form under this exhibit shall be furnished in final form immediately after the meeting of depositors or shareholders to consider the plan of conversion, except for documents which by their nature cannot be in final form until a later time, in which case they shall be furnished in substantially final form.

Exhibit 3. Opinion of Counsel.

Furnish an opinion of counsel for the converting institution regarding each of the following matters: (a) the legal sufficiency of the converting institution's proposed certificates and order forms for shares of capital stock; (b) the conformance with the Banking Law and any regulations promulgated thereunder of the plan of conversion; (c) the compliance with the Banking Law and any regulations promulgated thereunder of the converting institution's bylaws; (d) the type and extent of voting rights in the converting institution after conversion; and (e) the valid authorization and issuance of the capital stock and the nonassessability of such stock.

Exhibit 4. Federal and State Tax Opinions and Rulings.

(a) Furnish an opinion of the converting institution's tax advisor or an Internal Revenue Service ruling as to the Federal income tax consequences of the plan of conversion to the converting institution and to the depositors or shareholders who receive nontransferable subscription rights to purchase capital stock.

Instruction: The Superintendent may require that such an Internal Revenue Service ruling be obtained if the converting institution's plan of conversion is not substantially similar to plans of conversion which have received favorable rulings. The Superintendent may also require that such a ruling be obtained if the converting institution's plan of conversion contains novel provisions or there is otherwise a question as to the Federal income tax consequences of the plan.

(b) Furnish an opinion of the converting institution's tax advisor or if applicable, a ruling from the appropriate State taxing authority, as to any tax consequences of the plan of conversion to the converting institution and to its depositors and shareholders under the laws of the State of New York.

Exhibit 5. Valuation Materials.

Furnish any materials required to be filed by section 86.5(c)(4) of Part 86 regarding the valuation of the converting institution's capital stock. A converting institution is not required to file such materials if the offering of capital stock will not commence before the meeting of depositors or shareholders to vote on the plan of conversion.

Exhibit 6. Notice to Depositors or Shareholders.

Furnish the notice to the converting institution's depositors or shareholders required by section 86.4 of Part 86.

Exhibit 7. Organization Certificate and Bylaws.

Furnish a copy of the converting institution's proposed amended organization certificate and bylaws which shall be effective upon the conversion of the institution to stock form. If a holding company is being formed in connection with the conversion, also furnish a copy of the proposed organization and bylaws of the holding company.

Exhibit 8. Business Plans.

Furnish a consolidated business plan. The converting institution shall provide, as part of the business plan, a detailed discussion of how the capital acquired in the conversion will be utilized, including, among other things, any proposed stock repurchases.

Exhibit 9. Other Materials.

(a) If information required by an appropriate form is not provided because such information is unknown or unavailable, furnish a detailed statement as to the reasons for each such omission.

(b) Furnish all consents of experts required to be filed by section 86.4(1) of Part 86.

(c) If applicable, furnish the statement required by the Instruction to Item 5(e) of Form 86-PS regarding events which occurred within the last 10 years to directors or trustees or the converting institution.

(d) If information required by Item 14(h) of Form 86-PS relating to historical financial information is omitted, furnish the statement required by Item 14(h)(1) of Form 86-PS.

(e) Furnish any powers of attorney employed pursuant to Part 86.

(f) A converting institution shall also submit a copy of an opinion from an independent executive compensation expert stating whether or not the total compensation for the executive officers, directors or trustees, viewed as a whole and on an individual basis, is reasonable and proper in comparison to the compensation provided to executive officers, directors or trustees of similar publicly traded financial institutions. The opinion shall address any stock option and employee or director stock benefit plans disclosed in the proxy solicitation and stock offering materials that are intended to be presented to stockholders for a vote in the year following the effective date of the conversion. A detailed discussion of the basis of such opinion shall be included in the opinion.

(g) Furnish copies of any written offers or written expressions of interest to acquire the converting institution submitted by any person to the board of trustees or directors any time after the date one year prior to the publication of approval of the plan of conversion by the board of trustees or directors.

§ 86.14 **Proxy statement**

The proxy statement required by this Part shall comply with form 86-PS, except that a converting institution may combine the proxy statement and offering circular in one document. A short-form proxy statement shall contain the information required by Items 1, 2, 3, 4 and 5 of form 86-PS. A short-form proxy statement shall also include cross references to the sections of the offering circular containing the information required by form 86-PS, which reads in its entirety as follows:

FORM 86-PS
Facing Sheet
NEW YORK STATE [BANKING] DEPARTMENT OF FINANCIAL SERVICES
[2 Rector Street] One State Street
New York, New York 1000[6]4
Proxy Statement

_____
(Exact name of converting institution as specified in charter)

_____
(Street address of converting institution)

_____
(City, State and ZIP Code)

Proxy Statement Form -- Index to Items

Item 1. Notice of Meeting
Item 2. Revocability of Proxy
Item 3. Persons Making Solicitation
Item 4. Voting Rights and Vote Required for Approval
Item 5. Directors and Executive Officers
Item 6. Remuneration and Other Transactions with Management and Others
Item 7. Business of the Converting Institution
Item 8. Description of the Plan of Conversion
Item 9. Description of Capital Stock
Item 10. Capitalization
Item 11. Use of New Capital
Item 12. New Charter, Bylaws or Other Documents
Item 13. Other Matters
Item 14. Financial Statements
Item 15. Consents of Experts and Reports
Item 16. Attachments

FORM 86-PS
Information Required in Conversion Proxy Statement

Note: 1. Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers, trustees or other persons holding specified positions or relationships, the information shall be given in regard to any person

who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

2. The proxy statement shall include such information which the Superintendent by interpretative release or otherwise has deemed necessary to comply with items of this Form 87-PS.

Item 1. Notice of Meeting. The cover page of the proxy statement shall give notice of the meeting of the depositors or shareholders called by the board of directors or trustees to act upon the conversion. The cover page shall include the date, time, and place of the meeting, a brief description of each matter to be acted upon at the meeting, the date of record for depositors or shareholders entitled to vote at the meeting, the date of the statement, and the full address, zip code and telephone number of the converting institution.

Item 2. Revocability of Proxy. State that the person giving the proxy has the power to revoke it before the proxy is exercised at the meeting. If the right of revocation is subject to compliance with any formal procedure, briefly describe such procedure. Briefly describe any charter, bylaw or applicable Federal or State law requirements otherwise restricting voting by proxy. State that the proxy is solicited for the meeting called to consider the conversion, and any adjournment thereof, and will not be used for any other meeting.

Item 3. Persons Making the Solicitation. (a) State whether the solicitation is made by the management of the converting institution. Give the name of any director or trustee of the converting institution who has informed the management in writing that he intends to oppose any action intended to be taken by the management and indicate the action which he intends to oppose.

(b) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state the material features of any contract or arrangement for such solicitation and identify the parties.

(c) If the solicitation is made otherwise than by the management of the converting institution, so state and give the name of the eligible account holder by whom or on whose behalf it is made, the name of any person soliciting proxies on behalf of such eligible account holder, the length of time he or she has been a depositor, and the reasons he or she is making the solicitation. Any such solicitation normally need not respond to Items 5 through 16, but must include such information as to make such solicitation comply with section 86.4(h) of Part 86. All proxy solicitation materials used by or on behalf of an eligible account holder shall solicit proxies only for an affirmative or negative vote with respect to the plan of conversion approved by the board of trustees or directors for presentation to eligible account holders and may not confer discretionary authority. If the depositor's proxy solicitation is being financed by a third party, such party's identity and any interest of such person in the transaction must be disclosed.

Item 4. Voting Rights and Vote Required for Approval.

(a) Describe briefly the voting rights of the depositors or shareholders. State the approximate total number of votes entitled to be cast at the meeting.

(b) As part of the description give the date of record for the depositors or shareholders entitled to vote at the meeting.

(c) As to each matter which will be submitted to a vote of the depositors or shareholders, state the vote required for its approval.

Item 5. Directors, Trustees and Executive Officers.

(a) Furnish the information regarding directors, trustees and executive officers and certain relationships and related transactions required to be disclosed under Item 5 of 12 CFR 563b.101. {1} Unless the context otherwise requires, the words "registrant" and "issuer" in thoseregulations shall refer to the converting institution and the word "Commission" shall refer to the [Banking] Department.

(b) State whether control of the converting institution has been exercised through the use of proxies and the nature of such control.

Item 6. Management Remuneration.

(a) Furnish the information regarding management remuneration required to be disclosed under Item 6 of 12 CFR 563b.101. {1} Unless the context otherwise requires, the words "registrant" and "issuer" in those regulations shall refer to the converting institution and the word "Commission" shall refer to the [Banking] Department.

(b) A statement shall be included in this Item indicating that an independent executive compensation expert (the name of such expert shall be given) has reviewed the total compensation package for executive officers, directors or trustees for the purpose of determining whether or not such compensation package, viewed as a whole and on an individual basis, is reasonable and proper in comparison to compensation provided to executive officers, directors or trustees of similar publicly traded financial institutions.

Item 7. Business of the Converting Institution.

(a) Narrative Description of Business. (1) Discuss briefly the organizational history of the converting institution, including the year or the organization, the identity of the chartering authority, and any material charter conversion.

(2) Describe the business conducted and intended to be conducted by the converting institution and its subsidiaries. This should include a description of the general development of the business of the converting institution and any predecessor(s) during the past five years, or such shorter period as the applicant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business. Any material changes in the mode of conducting the business should be discussed.

(3) Consideration should be given to inclusion of a description of the converting institution's historical practices, including the average remaining term of maturity of its portfolio of mortgage loans, and present intention regarding the making of loans, whether real estate or other, the nature of security received, the terms of loans, whether carrying fixed or variable interest rates, and the retention of loans or their resale in secondary mortgage markets. Historical description might require a general identification of the magnitude of various activities.

(4) Also explain any significant impact to the thrift institution as a result of any material acquisitions.

(b) Selected Financial Data. Furnish in comparative columnar form a summary of selected financial data for the converting institution for:

(1) each of the last five fiscal years of the converting institution (or for the life of the converting institution and its predecessors, if less); and

(2) any additional fiscal years necessary to keep the summary from being misleading.

Instructions.

1. The purpose of the summary of selected financial data shall be to supply in convenient and readable format selected data which highlight significant trends in the converting institution's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the converting institution's business, the following items, as a minimum, shall be included in the summary: total interest income; total interest expense; income (loss) from continuing operations; net income; total loans; total investments; total assets; total savings; total borrowings; total regulatory capital; and total number of offices indicating the number which provide full service. Converting institutions may include additional items which they believe would enhance understanding and highlight trends in their financial and results of operations. Briefly describe, or cross reference to a discussion of, factors such as accounting changes, business combinations, or dispositions of business operations that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where those matters might cause the data reflected not be indicative of the converting institution's future financial condition or results of operations.

3. Those converting institutions which elect to provide five-year summary information in accordance with the standards identified in Instruction 3 to Item 7(b) of 12 CFR 563b.101(see footnote # 1) {1}, may combine such information with the selected financial data appearing pursuant to this Item.

4. All references to the converting institution in the summary and in these instructions shall mean the converting institution and its consolidated subsidiaries.

5. If interim-period financial statements are included, or are required to be included by Item 14, converting institutions should update the selected financial data for the interim period to reflect any material change in the trends indicated, where such updating information is necessary, converting institutions shall provide the information on a comparative basis unless not necessary to an understanding of the updating information.

(c) Management's Discussion and Analysis of Financial Condition and Results of Operations.

(1) Discuss the converting institution's financial condition, changes in financial condition, and results of operations. The discussion shall provide information as specified in subparagraphs (i), (ii), and (iii) of this paragraph with respect to liquidity, capital resources, and results of operations and also should provide all other information which the converting institution believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operations. Significant business combinations should be discussed. Discussion of liquidity and capital resources may be combined whenever the two topics are interrelated.

Where in the converting institution's judgment a discussion of subdivisions of the converting institution's business would be appropriate to an understanding of the business, the discussion should focus on each relevant, reportable segment or other subdivision of the business and on the converting institution as a whole.

(i) Liquidity. Identify any known trends or any known demands, commitments, events, or uncertainties which will result in or which are reasonably likely to result in the converting institution's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the converting institution has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets. Comment on maturity imbalances between assets and liabilities and planned activities in the secondary mortgage market.

(ii) Committed Resources. (a) Describe the converting institution's material commitments for loan fundings or other expenditures as of the end of the last fiscal period and indicate the general purpose of the commitments and the anticipated source of funds needed to fulfill the commitments.

(b) Describe any known material trends, favorable or unfavorable, in the converting institution's committed resources. Indicate any expected material changes in the mix and the relative cost of the resources. This discussion should consider changes between savings, equity, debt, and any off-balance-sheet financing arrangements.

(iii) Results of Operations. (a) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount or reported income from continuing operations and, in each case, indicate the extent to which income was affected. In addition, describe any other significant components of revenues or expenses which, in the converting institution's judgment should be described in order to understand the converting institution's results of operations.

(b) Describe any known trends or uncertainties which have had, or which the converting institution reasonably expects will have, a materially favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the converting institution knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of money or interest rates) the change in the relationship should be disclosed.

(c) To the extent that the financial statements disclose material increases in interest expense, provide a narrative discussion of the extent to which the increases are attributable to increases in rates or to increases in volume.

(d) For the three most recent fiscal years of the converting institution, or for those fiscal years in which the converting institution has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the converting institution's revenues and on income from continuing operations.

(e) For the most recent financial statement presented, discuss any unusual risk characteristics in the assets of the converting institution. This would include real estate development, significant amounts

of commercial real estate as loan collateral, and any other significant risk factors inherent in the converting institution's lending or investment portfolios, including significant increases in amounts of nonaccrual, past due, restructured, and potential problem loans.

Instructions.

1. The converting institution's discussion and analysis shall be of the financial statements and of other statistical data which the converting institution believes will enhance a reader's understanding of its financial condition, changes in financial condition, and results of operations. Generally, the discussion should cover the three year period covered by the financial statements and should utilize year- to-year comparisons or other formats which in the converting institution's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in Item 7(b) above may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the converting institution as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this item 7(c) need only include that which is available to the converting institution without undue effort or expense and which does not clearly appear in the converting institution's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the converting institution's business as a whole; provided, however, if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Converting institutions need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (c)(1)(i) of this Item 7 refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the converting institution should indicate those balance sheet conditions or income or cash flow items which the converting institution believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the converting institution's own business or businesses.

6. Converting institutions are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently known data which will have an impact

upon future operating results, such as known future increases in rates or other costs. This latter data is required to be disclosed.

7. Converting institutions which elect to provide narrative explanations of supplementary information disclosed in accordance with Instruction 7 to Item 7(c)(1) of 12 CFR 563b.101 (see footnote #1), may combine the explanations with their discussion and analysis required pursuant to this provision or they may supply the information separately.

8. Converting institutions which elect not to provide explanations of supplementary information disclosed in accordance with Instruction 8 to Item 7(c)(1) of 12 CFR 563b.101 (see footnote #1).

9. All references to the converting institution in the discussion and in these instructions shall mean the converting institution and its consolidated subsidiaries.

(2) If interim-period financial statements are included or are required to be included by Item 14 a management's discussion and analysis of the financial condition and results of operations shall be provided to enable the reader to assess material changes in financial condition and results of operations between the periods specified in (i) and (ii) below. The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (c)(1) of this Item 7, except that the impact of inflation and changing prices on operations for interim period needs not be addressed.

(i) Material Changes in Financial Condition. Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material change in financial condition from that date to the date of the most recent interim balance sheet provided shall also be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the converting institution.

(ii) Material Changes in Results of Operations. Discuss any material changes in the converting institution's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the converting institution is required to or has elected to provide an income statement for the most recent fiscal year quarter, the discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the converting institution has elected to provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet provided, the discussion shall also cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions. 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to paragraph (c)(2) and the discussion of the full fiscal year information shall be prepared pursuant to paragraph (c)(1) of this Item 7. Such discussions may be combined.

2. The discussion and analysis required by this paragraph (c)(2) is

required to focus only on material changes. Where the interim financial statements reveal material changes from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed; however, if the causes for a change in one line item also relate to other line items, no repetition is required. Converting institutions need not recite the amounts of changes from period to period which are readily computable from the financial statements. This discussion should not merely repeat numerical data contained in the financial statements. The information provided should include that which is available to the converting institution without undue effort or expense and which does not clearly appear in the converting institution's interim financial statements.

3. The converting institution's discussion of material changes in results of operations should identify any significant elements of the converting institution's income or loss from continuing operations which do not arise from or are not necessarily representative of the converting institution's ongoing business.

4. Converting institutions are encouraged but are not required to discuss forward-looking information.

(d) Lending Activities. (1) Briefly describe the applicable federal and State restrictions on the lending activities of the converting institution, including applicable laws affecting mortgage loan interest rates. Also briefly describe the converting institution's general policy concerning loan-to-value ratios; customary methods of obtaining loan originations, such as the use of loan consultants; approval of properties as security for loans; the use of a loan committee, if any; and policies as to requiring title, fire, and casualty insurance on security properties. Indicate the converting institution's general future intentions with respect to activities in secondary mortgage markets, including transactions with the Federal Home Loan Mortgage Corporation or mortgage bankers. If significant, indicate loan service fee income as a percentage of net interest income for the years required by Item 14(b).

(2) As to the lending area of the converting institution, describe briefly (i) the lending area restrictions, if any, applicable to the converting institution, (ii) the areas in which the converting institution normally lends, and (iii) any material loan concentration areas of the converting institution.

The descriptions may include maps illustrating one or more of these areas. Furnish an estimate of the housing vacancy rates in areas where the converting institution's loan concentrations are located, if practicable.

(3) Describe briefly the general long-term nature of investment in mortgage loans and the consequent effect upon the earnings spread of

thrift institutions. State the normal maturity of loans made by the converting institution on the security of single-family dwellings and furnish an estimate as to the average length of time the loans are outstanding.

(4) For each of the periods required by Item 14(b), set forth in tabular form, excluding fees which are not considered adjustments of yield, the following:

(i) Average yield during the period on: (a) loan portfolio, (b) investment portfolio, (c) other interest-earning assets, and (d) all interest earning assets. Average yield should be computed on no greater than a monthly basis.

(ii) Average rate paid during the period on: (a) deposits, (b) borrowings and Federal Home Loan Bank advances, (c) other interest-bearing liabilities, (d) all interest-bearing liabilities ((a), (b), and (c)). Average rate paid should be computed on no greater than a monthly basis.

(iii) Weighted-average yield at end of the latest required period for the items in (i) and (ii) above.

(iv) The net yield on average interest-earning assets (net interest earnings divided by average interest-earning assets, with net interest earnings equaling the difference between the dollar amount of interest earned and paid). Average interest-earning assets should be determined on an interval no more frequent than monthly.

(v) For each of the periods required by Item 14(b), set forth in tabular form: (a) the dollar amount of change in interest income and (b) the dollar amount of change in interest expense. The changes should be segregated for each major category of interest-earning asset and interest-bearing liability (as stated in (i) and (ii) above) into amounts attributable to (1) changes in volume (change in volume multiplied by old rate), (2) changes in rates (change in rate multiplied by old volume), and (3) changes in rate-volume (change in rate multiplied by the change in volume). The rate/volume variances should be allocated on a consistent basis between rate and volume variance and the basis of allocation disclosed in a note in the table.

(5) For each of the periods required by Item 14(b), present the following: (i) return on assets (net income divided by average total assets); (ii) return on equity (net income divided by average equity); (iii) equity-to-assets ratio (average equity divided by average total assets).

Instructions. Converting institutions should supply any additional ratios which they deem necessary to explain their operations.

(6) As of the end of the last fiscal year reported on, with respect to (i) real estate mortgage loans, (ii) real estate construction loans, (iii) instalment loans, and (iv) commercial, financial, and agricultural

loans, present separately the amounts of loans in each category which are due: (i) in each of the three years following the balance sheet, (ii) after three through five years, (iii) after five through ten years, (iv) after ten through fifteen years, and (v) after fifteen years.

In addition, present separately the total amount of all such loans due after one year which have predetermined interest rates and floating or adjustable interest rates.

Instructions: 1. Scheduled principal repayments should be reported in the maturity category in which the payment is due.

2. Demand loans, loans having no stated schedule of repayments and no stated maturity, and over-drafts should be reported as due in one year or less.

3. Determinations of maturities should be based upon contract terms. However, such terms may vary due to the converting institution's "roll-over policy," in which case the maturity should be revised as appropriate and the rollover policy should be briefly discussed.

(7) Describe briefly the risk elements within the loan and investment portfolios including the converting institution's customary procedures regarding delinquent loans. As of the end of each of the periods covered by the statements of operation required by Item 14(b)(1) and as of the date of the latest statement of financial condition required by Item 14(a), set forth in tabular form the amounts and categories of nonaccrual, past due, restructured, and potential problem loans and the ratio of such loans to total assets. Where the amount of real estate that has been in substance foreclosed, acquired by foreclosure, or by deed in lieu thereof is significant, include a brief description of the major properties and a statement as to the converting institution's probable losses, if any, upon disposition of such properties.

(e) Savings Activities. (1) State whether the maximum rate of interest which the converting institution may pay is established by regulatory authorities. State that, in the event of liquidation of the converting institution after conversion, savings account holders will be entitled to full payment of their accounts prior to payment to holders of the capital stock of the institution. Also indicate the percentage of total savings accounts which are from out-of-state sources, if such total is significant.

(2) Set forth in tabular form the amounts of time deposit accounts by categories of interest rates as of the dates of each balance sheet filed. Each interest-rate category should not be more than 200 basis points. As of the date of the latest balance sheet, set forth, in tabular form for each interest-rate category, the amounts of savings maturing during each of the three years following the balance sheet date and the total maturing thereafter.

(3) Disclose the weighted-average rate and general terms (as well as

formal provisions for the extension of the maturity) of each category of short-term borrowings, along with the maximum amount of borrowings in each category outstanding at any month-end during each period for which an end-of-period balance sheet is required. In addition, disclose the approximate average short-term borrowings outstanding during the period and the approximate weighted-average interest rate (and a brief description of the means used to compute such average) for such aggregate short-term borrowings. The disclosure required by this paragraph (3) need not be furnished as regards borrowings in each particular category when the aggregate amount of such borrowings at the balance sheet date does not exceed one percent of assets at that date. Notwithstanding this reporting threshold, if the weighted average of such borrowings outstanding during the year exceeds one percent of assets at year-end and significantly exceeds the amount of such borrowings at year-end, the disclosure called for by this paragraph (3) should be furnished. This information is not required to be given for any category of short-term borrowings for which the average balance outstanding during the period was less than 30 percent of stockholders' equity at the end of the period.

(f) Federal Regulation. Describe briefly, to the extent not otherwise covered by other items, federal regulation of the converting institution and the conduct of its operations. In particular, describe briefly the Federal Home Loan Bank System, the Federal Deposit Insurance Corporation, and/or the Federal Reserve System, as applicable and state that the converting institution is a member or is otherwise subject to the jurisdiction thereof. Such description shall include (i) the insurance of accounts and the general regulatory authority of the Federal Deposit Insurance Corporation, (ii) federal regulatory capital requirements and the converting institution's regulatory capital position in relation to those requirements, (iii) limitations on borrowings, (iv) recent loan policies of the converting institution's Federal Home Loan Bank or other applicable regulator and current interest rates, and (v) Federal Home Loan Bank or other applicable regulator's stock purchase requirements and the converting institution's position with respect to those requirements. Also describe the assessment authority and requirements of the Federal Deposit Insurance Corporation. In addition, describe briefly applicable liquidity requirements and state the converting institution's position with respect to those requirements.

(g) State Law. Describe briefly provisions of State law which have a material effect on the business of the converting institution.

(h) Federal and State Taxation. Describe briefly the federal income tax laws applicable to the converting institution including: (1) permissible bad debt reserves; (2) the converting institution's position with respect to the maximum bad debt reserve limitations as of the date of

the latest statement of financial condition required under Item 14(a); (3) future increases in the effective income tax rate; (4) the date thorough which the converting institution's federal income tax returns have been audited by the Internal Revenue Service; and (5) the tax effect to the converting institution of the payment of cash dividends on capital stock of the applicant after conversion. Also describe briefly the State taxation of the converting institution.

(i) Competition. Describe the material sources of competition for thrift institutions generally and indicate to the extent practicable the converting institution's position in its principal lending and savings markets.

Instruction. In answering Item 7(j) give to the extent known the converting institution's savings and mortgage product market shares by county in its geographic market. Also indicate its rank and any material changes or trends in its competitive standing.

(j) Offices and Other Material Properties. (1) Furnish the location of the converting institution's principal office and each existing and approved branch office and other office facilities. State the total net book value of all such offices as of the date of the latest statement of financial condition required by Item 14(a). If any such office is leased, state the expiration dates of such leases.

(2) Describe briefly undeveloped land owned by the converting institution, including location, net book value, and prospective use and holding period. If the converting institution or a subsidiary owns or leases electronic data processing equipment principally for its own use, describe briefly such equipment indicating net book value if owned or the principal lease terms if leased.

(k) Employees. State the number of persons employed full-time by the converting institution including executive officers listed under Item 5. State whether employees are represented by a collective bargaining group and whether the converting institution's relations with its employees is satisfactory. Summarize briefly any loans, profit sharing, retirement, medical, hospitalization or other remuneration plans provided for employees not already included pursuant to Item 6.

(1) Service Corporations, Operations Subsidiaries and Leeway Subsidiaries. Describe briefly the converting institution's investment in any subsidiary and the major lines of business (including any joint ventures) of the subsidiary which are material to its operations.

(m) Legal Proceedings. Furnish the information regarding legal proceedings required to be disclosed by Item 7(n) of 12 CFR 563b.101 (see footnote #1). {1} Unless the context otherwise requires, the word "registrant" in that regulation shall refer to the converting institution.

(n) Additional Information. The Superintendent may upon the request of

a converting institution, and where consistent with the protection of account holders and others, permit the omission of any of the information required by this Item or the furnishing in substitution therefor of appropriate information of comparable character. The Superintendent may also require the furnishing of other information in addition to, or in substitution for, the information required by this Item in any case where such information is necessary or appropriate for an adequate description of the converting institution's business done or intended to be done.

Item 8. Description of the Plan of Conversion.

(a) A statement to the following effect shall be inserted in the proxy statement immediately preceding the information required by this Item: The [Banking] Department has given approval to the Plan of Conversion, subject to its approval by depositors or shareholders, as applicable, and the satisfaction of certain other conditions. However, such Department approval does not constitute a recommendation or endorsement of the Plan of Conversion by the Department.

(b) The proxy statement shall contain a description of the plan of conversion. Such description shall contain the information required by paragraphs (c) through (j) of this Item and such additional information as may be necessary to accurately describe the material provisions of the plan.

(c) Describe the effects of conversion from a mutual institution to a stock institution including the following information: (1) state that share and deposit accounts of the converting institution will not be affected by the conversion with respect to such matters as balances in the accounts and the extent of insurance of such accounts by the federal deposit insurer; (2) state whether shareholders or borrowers of the converting institution will continue to have voting rights in the converting institution after conversion, and describe any voting rights they will have; (3) state the present liquidation rights of account holders and describe the liquidation account to be established and maintained by the converting institution, including the conditions under which such account will be paid, the interest of Eligible Account Holders in such account and the formula by which such account will be adjusted; (4) state that the rights and obligations of borrowers from the applicant will not be changed in any manner; (5) state that capital stock to be sold by the converting institution will not be insured; (6) state that none of the assets of the converting institution will be distributed in order to effect the conversion other than to pay expenses incident thereto; (7) state the reasons why management is recommending the conversion, including any advantages to the community served by the converting institution; and (8) state any reasons why management believes that such conversion would be detrimental to the interests of

the depositors or shareholders.

(d) Describe any contacts which have occurred during the period beginning one year prior to publication of approval of the plan of conversion by the board of trustees or directors with the converting institution, or any of its trustees, directors, or executive officers, concerning: a merger conversion, the acquisition of securities of any class of the converting institution, or a sale or other transfer of a material amount of assets of the converting institution or any of its subsidiaries; provided, however, that no disclosure shall be required under this paragraph (d) unless the proposed transaction is: (i) communicated in writing; (ii) definitive by its terms; and (iii) not subject to significant conditions which, if considered at the time of such proposed transaction, would make consummation of the transaction unlikely. In determining the significance of any condition the converting institution shall consult with the [superintendent] Superintendent as to all such proposed transactions occurring within the applicable time period which were communicated in writing and definitive by their terms. Describe the factors considered by the board of trustees or directors in rejecting any such proposed transaction.

(e) With respect to the subscription rights of depositors or shareholders, furnish the following information: (1) the formula to be used for determining the subscription rights of depositors or shareholders to purchase shares; (2) any optional provisions included in the plan of conversion for the purchase of shares of capital stock, including the purchase priorities, limitations on total purchases, the total number of shares which may be purchased, and the formula for the allocation; (3) the allocation formulas to be used in the event that there is an oversubscription of shares at any time during the sale of stock under the plan of conversion; and (4) the use and timing of the order forms with respect to the exercise of subscription rights.

(f) (1) Set forth on a per-share basis the estimated public offering price range of the shares of capital stock to be sold pursuant to the plan of conversion, except that an estimated price range is not required to be stated if the offering of stock is not to commence until after the meeting of depositors or shareholders to vote on the plan of conversion; (2) state that the offering price will be the pro forma market value of such shares as determined by the institution's management and the underwriters, as the case may be; and (3) state that all of the shares are required to be sold.

(g) Unless the offering of stock is not to commence until after the meeting of depositors or shareholders to vote on the plan of conversion, discuss (1) the earnings per share on a pro forma basis of the capital stock to be sold as of the end of the most recent period covered by the

statements of operation required by Item 14(b)(1); and (2) the book value per share of a pro forma basis as of the date of the latest statement of financial condition required by Item 14(a).

Instructions: 1. Earnings and book value per share shall be furnished, without giving effect to the estimated net proceeds from the sale of the capital stock, and then after giving effect to such proceeds with all assumptions used clearly stated.

2. In computing pro forma earnings, the applicant shall use the arithmetic average of the (i) average yield on all interest-earning assets (Item 7(d)(4)(i)(D)) and (ii) average rate paid of deposits (Item 7(d)(4)(ii)(A)).

3. If significant changes in interest rates occur during the periods presented, the Superintendent will consider permitting alternative computations proposed by a converting institution that are properly supported.

4. An appropriate statement should be included which explains that the pro forma data should not be relied upon as indicative of the actual financial position or results of continuing operations that will be experienced by the converting institution after its conversion.

(h) State the proposed commencement and expiration dates of the subscription period and describe any provisions in the plan of conversion related to the timing or extension of the subscription period. Also, state (1) that a maximum subscription price will be set forth in the offering circular used for offering of subscription rights; (2) that the actual subscription price will be the public offering price; (3) that the actual subscription price will not exceed the maximum subscription price shown on the order form; and (4) that any difference between the maximum and actual subscription prices will be refunded unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(i) Furnish the following information: (1) describe to the extent practicable the converting institution's present intentions with respect to listing the capital stock on an exchange or otherwise providing a market for the purchase and sale of capital stock in the future; (2) describe the tax effect of the conversion both to the converting institution and to the depositors or shareholders receiving nontransferable subscription rights to purchase capital stock in the conversion; (3) state that the plan of conversion is attached as an exhibit to the proxy statement (or will be made available on request in the case where a short-form proxy statement is used) and should be consulted for further information.

(j) (1) State whether the plan of conversion provides for unsubscribed capital stock to be offered to the public through underwriters or directly by the converting institution. If such is the case, provide the

information to the extent known required by Item 6 of Form 86-OC and indicate the estimated timing of the proposed offering.

(2) State whether the plan of conversion provides for the purchase by any person or group of any insignificant residue of shares remaining at the conclusion of the offering.

(k) Furnish the following information in tabular form regarding proposed purchases of capital stock involving directors, officers and trustees of the converting institution:

(1) State the total number of shares proposed to be purchased by all directors, officers and trustees as a group without naming them.

(2) As to each officer, director or trustee named in Item 6(a)(1)(i), name him, state his position, and the number of shares proposed to be purchased by him.

(3) As to any officer, director, trustee or associate thereof who proposes to purchase one percent or more of the total number of shares of capital stock of the converting institution to be outstanding, name him, state his position, and the number of shares proposed to be purchased by him.

(4) With respect to the information required by (1), (2), and (3) above, indicate separately the number of shares proposed to be purchased in each offering category.

Instructions: With respect to the information requested as to associates of officers, directors and trustees, such information is required only to the extent known. In a case where such information is not obtainable, only the number of shares which the associate is given subscription rights to purchase need to be disclosed.

(l) With respect to the appraisal required by Section 86.4(e) of this Part:

(1) Briefly describe the qualifications of the appraisers and the method of selecting the appraiser.

(2) Describe any material relationship between the appraiser and the converting institution or any underwriter.

(3) Furnish a summary concerning such appraisal which shall include, but not be limited to, the procedures followed, the findings and recommendations, the bases and assumptions for and methods of arriving at such findings and recommendations, instructions received from the converting institution or any underwriter, and any limitation imposed by the converting institution or underwriters on the scope of the investigation.

(4) Furnish a statement to the effect that such appraisal shall be made available for inspection and copying at the principal executive offices of the converting institution during its regular business hours by any interested eligible account holder of the converting institution or his or her representative who has been so designated in writing. This

statement may also provide that a copy of such appraisal will be transmitted by the converting institution to any interested eligible account holder of the converting institution or his or her representative who has been so designated in writing upon written request and at the expense of the requesting eligible account holder.

Item 9. Description of Capital Stock.

(a) Furnish the information regarding capital stock of the converting institution required to be disclosed under Item 9(a) of 12 CFR 563b.101(see footnote #1). Unless the context otherwise requires, the term "registrant" in that regulation shall refer to the converting institution.

(b) An undertaking should be included in the proxy statement that the converting institution where practical will use its best efforts to encourage and assist a professional market maker in establishing and maintaining a market for the capital stock of the converting institution.

(c) Outline briefly the trading market that is expected to exist for the capital stock following the conversion including the estimated number of market makers and stockholders, and the anticipated success of the converting institution in listing the stock.

Instructions: Any discussion of the listing of the converting institution's stock should include the basic requirements that must be satisfied in order to accomplish such listing.

(d) If the rights evidenced by the capital stock will be materially limited or qualified by the rights of savings account holders or borrowers, include the information regarding the limitations or qualifications necessary to enable investors to understand the rights evidenced by the capital stock.

Item 10. Capitalization.

Set forth in substantially the tabular form indicated below the dollar amounts of the capitalization of the converting institution:

	(A) Capitalization as of Latest Statement of Condition Date	(B) Adjustments as a Result of Conversion	(C) Pro forma Capitalization After Giving Effect to the Conversion
1. Share and Deposit Accounts	$	$	$
2. FHL Bank Advances			
3. Subordinated Debt Securities			
4. Other Borrowings			
5. Capital Stock			
6. Paid in Capital			
7. Undivided Profits			

8. Other Net Worth			
9. Federal Insurance Reserve, if applicable			
10. Other Reserves	_____	_____	_____
11. Total	$	$	$

Instructions: 1. With respect to capital stock, indicate in the table or in a footnote the total number of shares to be authorized, the par or stated value of such shares, and the number of shares to be sold as part of the conversion.

2. With respect to the funds to be received by the converting institution from the sale to its capital stock, indicate in the table the estimated total amount of funds to be obtained and in a footnote state the price per share used in making such estimate. Such total amount and price per share shall be clearly identified as being estimates.

Item 11. Use of New Capital.

State the principal purposes for which the net proceeds to the converting institution from the capital stock to be sold are intended to be invested or otherwise used, and the approximate amount intended for each such purpose.

Instructions: Details of proposed investments are not to be given. There need be furnished, for example, only a brief statement of any investment or other activity of the converting institution which will be affected materially by the availability of the proceeds. Examples of such activities may include expanded secondary market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

Item 12. New Charter, Bylaws or Other Documents.

Describe briefly any material differences between the provisions of existing charter, bylaws and any similar documents of the converting institution and those which will take effect after conversion, including, if applicable, optional charter provisions provided for in Section 86.10 of Part 86.

Instruction: This Item requires only a brief summary of the provisions which are pertinent from both an investment and a voting point of view. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions verbatim; only a succinct summary is required.

Item 13. Other Matters.

State that the converting institution will register its capital stock under section 12(g) of the Securities Exchange Act of 1934, as amended, and that it will not deregister such stock for a period of three years. State that upon such registration the proxy rules, insider trading

reporting and restrictions, annual and periodic reporting and other requirements of that Act will be applicable.

Item 14. Financial Statements.

Notes: 1. The following instructions specify the consolidated balance sheets, the consolidated statements of income, the consolidated statements of cash flows, and stockholders' equity required to be included in the proxy statement.

2. If the converting institution has previously used an audit period in connection with its certified financial statements which does not coincide with its fiscal year, such audit period may be used in place of any fiscal year requirement provided it covers a full 12 months' operations and is used consistently.

(a) Consolidated Balance Sheets. (1) There shall be furnished for the applicant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.

(2) If the latest balance sheets furnished under (1) of this paragraph are in excess of 135 days prior to the date of the Superintendent's approval of the conversion, there shall be furnished an interim balance sheet as of date within 135 days of such approval. This interim balance sheet need not be audited.

(b) Consolidated statements of income and cash flow. (1) There shall be furnished for the converting institution and its subsidiaries and predecessors consolidated, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent balance sheet furnished.

(2) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and cash flows shall be furnished. The interim statements may be unaudited.

(c) Changes in stockholders' equity. An analysis of the changes in each caption of stockholders' equity presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be furnished with all significant reconciling items described by appropriate captions.

(d) Financial statements of business acquired or to be acquired. There shall be furnished the information required under Item 14(d) of 12 CFR* 563b.101 regarding business acquired or to be acquired.

(e) Separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons. There shall be furnished the information required under Item 14(e) of 12 CFR 563b.101 (see footnote #1) {1} regarding separate financial statements of subsidiaries not consolidated

and 50 percent or less owned persons.

(f) Filing of other statements in other cases. The Superintendent may, upon the request of the converting institution, and where consistent with the protection of eligible account holders and others, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Superintendent may also require the inclusion of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of eligible account holders and others.

Item 15. Consents of Experts and Reports.

(a) The proxy statement shall briefly describe all consents of experts filed pursuant to Part 86.

(b) The statement shall contain a report of the independent public accounts who have certified the financial statements and other matters in the statement.

Item 16. Attachments.

There shall be attached to the proxy statement distributed to depositors or shareholders and others a copy of the converting institution's plan of conversion as approved by the Superintendent unless the following procedure is observed. The converting institution may in the alternative set forth in the proxy statement that the plan of conversion will not be provided unless the recipient so requests by returning within a specified period a postage-paid or other written communication.

§86.15 **Offering circular**

A converting institution (as applicable)shall be required to file with the [[superintendent] Superintendent and distribute to its eligible account holders and to the public an offering circular which complies with Form 86-OC, which reads in its entirety as follows:

FORM 86-OC

[**Facing Sheet**]

NEW YORK STATE [BANKING] DEPARTMENT OF FINANCIAL SERVICES

[2 Rector Street] One State Street

New York, New York 1000[6]4

Offering Circular

(Exact name of converting institution as specified in charter)

(Street address of converting institution)

(City, State and ZIP Code)

Offering Circular Form

Item 1. Information Required by and Use of Form 86-OC.

The offering circular shall be dated as of the date of its issuance. The offering circular shall contain substantially the same information required to be included in the proxy statement of the converting institution distributed to depositors or shareholders to vote upon the plan of conversion. Information of the type required to be included in the proxy statement may be omitted from the offering circular only to the extent that it is clearly inapplicable. The offering circular may be in "wrap around" form with the proxy statement attached.

Instructions: 1. The term offering circular refers to both the offering circular for the subscription offering and the offering circular for the public offering through an underwriter, unless otherwise indicated.

2. The offering circular shall include such information which the Superintendent by interpretive release or otherwise, has deemed necessary to comply with this Form 86-OC.

3. An offering circular for the subscription offering in "wrap around" form distributed to depositors or shareholders and other persons who have previously been furnished a copy of the proxy statement need not contain the proxy statement as an attachment provided such offering circular states that a copy of the proxy statement has previously been furnished to such persons and that an additional copy thereof will be furnished promptly upon request to the converting institution (with the telephone number and mailing address of the converting institution stated).

Item 2. Additional Current Information Required.

Each offering circular shall, as of its respective date of issuance, include to the extent available, the following additional current information to the extent that such information is not already included in the proxy statement:

(a) Information with respect to the vote of depositors or shareholders upon the plan of conversion and any other proposals considered at the meeting of depositors or shareholders.

(b) Information with respect to any recent material developments in the business affairs of the converting institution.

(c) Information with respect to the trading market that is expected to exist for the capital stock following the conversion.

(d) Information, on the outside front cover page, summarizing the results of any separate subscription offering including the number of shares sold to Eligible Account Holders, the price at which the shares were sold, and the number of unsubscribed shares to be sold in the public offering.

(e) The information required by Items 8(e)(1) and 8(f) of Form 86-PS.

(f) Any other information necessary to make such offering circular current, including full financial statements of the converting institution within six months prior to the date of issuance of such offering circular.

Item 3. Statement Required in Offering Circulars.

There shall be set forth on the outside cover page of every offering circular the following statement in capital letters printed in boldface Roman type at least as large as 10-point modern type and at least two points leaded:

THESE SHARES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE NEW YORK STATE [BANKING] DEPARTMENT OF FINANCIAL SERVICES, THE FEDERAL DEPOSIT INSURANCE CORPORATION OR THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION NOR HAVE SUCH DEPARTMENT OR CORPORATIONS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

Item 4. Preliminary Offering Circular.

The outside front cover page of any preliminary offering circular shall bear, in red ink, the caption "Preliminary Offering Circular," the date of its issuance, and the following statement printed in type as large as that used generally in the body of such offering circular:

"This offering circular has been filed with the New York State [Banking] Department of Financial Services, but has not been authorized for use in the final form. Information contained herein is subject to completion or amendment. The shares covered hereby may not be sold nor may offers to buy be accepted prior to the time the offering circular is approved for use by the New York State [Banking] Department of Financial Services. This offering circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these shares in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state."

Item 5. Information with Respect to Exercise of Subscription Rights.

Any offering circular which is required to be delivered to subscribers shall describe all material terms of the offering relating to the exercise of subscription rights to the extent that such description is not already in the proxy statement. Such terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price, possible reduction of subscription price,

relationship of subscription price to public offering price, requirements that all unsubscribed shares be sold, and any other material conditions relating to the exercise of subscription rights.

Item 6. Information with Respect to Public Offering.

Each offering circular shall describe the material terms of the plan or plans of distribution for all unsubscribed shares of capital stock to the extent such description is not already in the proxy statement, including the following:

(a) The outside front cover page of the offering circular shall give the information called for by this paragraph. Such information shall be given in substantially the tabular form set forth below. If the information is not known at the time of the subscription offering, so state and estimate.

	Price to Public	Underwriting Discounts and Commissions	Proceeds to Converting Institution
Per Share..	$.....	$.....	$.....
Total	$.....	$.....	$.....

(b) An offering circular for a public offering, where the plan of conversion does not contain the optional provision permitted by section 86.5(b)(4) of Part 86, may omit the description relating to the exercise of subscription rights required by Item 5.

(c) If any shares are to be offered through underwriters, the offering circular for the public offering shall state the names of the principal underwriters and the respective amounts underwritten by each. The names of the principal underwriters other than the managing underwriters and the respective amounts to be underwritten may be omitted from the offering circular for the subscription offering, unless the plan of conversion contains the optional provision permitted by section 86.5(b)(4) of Part 86. Each offering circular shall identify each principal underwriter having a material relationship to the converting institution and state the nature of the relationship. Each offering circular shall state briefly the nature of the underwriter's obligation to take the unsubscribed shares.

(d) The offering circular for the public offering shall state briefly the discounts and commissions to be allowed or paid to dealers in connection with the sale of the unsubscribed shares. Such information may be omitted from the offering circular for any subscription offering, unless the plan of conversion contains the optional provision permitted by section 86.5(b)(4) of Part 86.

(e) If any shares are to be offered through underwriters, the offering circular for the public offering shall identify any principal underwrit-

er that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the number of shares so intended to be confirmed. Such information may be omitted from the offering circular for any subscription offering.

Instructions: 1. Commissions include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings made with or for the benefit of any persons in which any underwriter or dealer is interested, in connection with the sale of the shares.

2. Only commissions paid by the converting institution in cash are to be included in the table. Any other consideration to the underwriters shall be set forth following the table with a reference thereto in the second column of the table. Any finder's fees or similar payments shall be appropriately disclosed.

3. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the shares if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such shares as they may sell to the public. Conditions precedent to the underwriters' taking the shares, including customary "market outs," need not be described. If a "best efforts" arrangement is used, describe any standby commitments for shares not sold.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 87
CONVERSION OF MUTUAL AND STOCK-FORM FEDERAL SAVINGS BANKS AND STOCK-FORM FEDERAL SAVINGS AND LOAN ASSOCIATIONS TO STATE CHARTER

(Statutory authority: Banking Law, §§ 14[**1**], 412)

Sec.
87.1 General information
87.2 Documents required
87.3 Additional documents

§ 87.1 **General information**

(a) The instructions set forth in this Part shall apply to the conversion of a mutual-form or stock-form Federal savings bank and stock-form Federal savings and loan association, having its principal place of business in this State, into a State-chartered savings institution pursuant to Banking Law, section 412.

(b) Six copies of a letter of application and each document referred to in section 87.2 of this Part, including two executed copies of the documents referred to in section 87.2(a)-(c), shall be filed with the Superintendent at the [Banking] Department at the address set forth in section 1.1 of Supervisory Policy G 1. The letter of application shall set forth the name and address of the officer to whom all communications from the [Banking] Department should be addressed, and the date or proposed date of filing of any required applications or other documents with any Federal agency, and shall be accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. Inquiries concerning the preparation of the application should be addressed to the Superintendent.

(c) Before submission of the application, the plan of conversion shall be approved by a majority of the board of directors or trustees. After such approval, in the case of a stock-form Federal savings and loan association, the plan shall then be approved at a meeting held upon not less than 10 days' written notice to each stockholder of such Federal savings and loan association, by the vote, in person or by proxy, of the holders of at least 66 2/3 percent of each class of capital stock of such institution. Notice of such meeting, together with any proxy material, shall be served personally upon or mailed to each stockholder at his or her last known address, and shall contain a statement of the time, place and purpose of the meeting.

(d) Within 60 days after the date the application is filed, the applicant shall take the action prescribed or authorized by Federal law to effect such conversion.

(e) Approval by the [superintendent] Superintendent will be conditional in all cases upon the continued insurance of the applicant's deposit accounts to the extent permitted by Federal law.

(f) Following submission of the application, the [superintendent] Superintendent may require a full examination of the applicant by State bank examiners before action is taken upon the application.

§ 87.2 **Documents required**

The following documents shall be filed as part of the application:

(a) plan of conversion, signed by the applicant's president and attested by its secretary, setting forth the terms and conditions of the conversion and the manner in which it is to be accomplished, including the names of the principal executive and administrative officers and directors or trustees;

(b) organization certificate, as required by Banking Law, section 230 or 4001, whichever may be applicable, executed by a majority of the applicant's directors or trustees;

(c) minutes of the meeting of stockholders of the stock-form savings and loan association at which the plan of conversion was approved, including the notice of meeting, proxy material, and plan of conversion in the form submitted, certified by the presiding officer and by the secretary of the meeting. The presiding officer and the secretary of the meeting shall certify that (1) the notice of meeting and proxy material were served personally or by mail, and (2) the plan of conversion in the form attached was the plan submitted at the meeting and was approved as specified in section 87.1(c) of this Part. Such certificate shall also indicate the actual vote for and against the plan of conversion; and (d) proposed bylaws of the converting institution as required by Banking Law, section 251 or 6001, whichever may be applicable.

§ 87.3 **Additional documents**

The following additional documents shall be submitted to the [superintendent]Superintendent as they become available to the applicant:

(a) copies of all notices, consents and authorizations required by Federal Law and regulations in connection with the conversion; and

(b) opinion of counsel for the applicant as to compliance with all requirements of Federal and State law in connection with the conversion.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 89

ALTERNATIVE INVESTMENTS IN DEBT AND EQUITY SECURITIES BY SAVINGS BANKS AND SAVINGS AND LOAN ASSOCIATIONS

(Statutory authority: Banking Law, §§ 235.30, 379.5)

Sec.
89.1 Scope
89.2 Definitions
89.3 Permitted investments
89.4 Prohibited investments
89.5 Investment committee
89.6 No presumption of prudence created

§ 89.1 **Scope**

The provisions of this Part shall apply to all investments in debt and equity securities made by any savings bank pursuant to section 235.30 of the Banking Law, or by any savings and loan association pursuant to section 379.5 of the Banking Law. The provisions of this Part shall not apply to debt or equity securities acquired by a thrift institution in good faith in full or partial settlement, modification or readjustment of any investment made, pursuant to the Banking Law, by such thrift institution where the acquisition of such securities was necessary in order for the thrift institution to minimize or avoid loss in connection with such investment. Any thrift institution which makes an election (and notifies the [Banking] Department in writing of such election) to purchase securities pursuant to section 235.30 of the Banking Law and this Part shall not be authorized to purchase any securities pursuant to sections 235.1, 235.2, 235.3, 235.4, 235.5, 235.7, 235.7-a, 235.10, 235.11, 235.13, 235.14, 235.15, 235.19, 235.21(a)(2), 235.21(b), 235.21-a, 235.24, 235.24-a, 235.24-b, 235.24-c, 235.25, 235.26, 235.27 and 235.28-a of the Banking Law. No thrift institution which has purchased any security pursuant to section 235.30 of the Banking Law and this Part shall purchase any additional amount of such security pursuant to any other provision of the Banking Law. Any security which is not authorized for purchase by section 235.30 of the Banking Law may be purchased pursuant to the provisions of section 235.31 of the Banking Law. No thrift institution shall acquire any security pursuant to section 235.31 of the Banking Law if such acquisition would cause such institution to violate section 89.4 (excluding subdivisions (b) and (f) thereof) of this Part. The authority of a savings bank to make investments pursuant to sections 235.9(a)(6) and 235-d of the Banking Law, and the authority of a savings and loan association to make investments pursuant to sections 379-b and 381.1(e) of the

Banking Law, is not affected by the enactment of this Part. Notwithstanding the fore going, any security purchased by a thrift institution may be retained by such institution, provided that such security was legally acquired in compliance with the Banking Law.

§ 89.2 **Definitions**

The following terms, as used in this Part, shall have the following meanings:

(a) The term security shall mean any stock, or any bond, note, debenture or other evidence of indebtedness. The term security does not include a futures contract or an option or warrant to purchase a security, except that an option or warrant acquired by the thrift institution as part of a unit which includes a debt or equity security shall constitute a security.

(b) The term qualified debt security shall mean any debt security which is not in default as to either principal or interest when acquired.

(c) The term qualified equity security shall mean any equity security which is, at the time of acquisition, listed on the New York Stock Exchange or the American Stock Exchange, or any equity security for which, at the time of acquisition, representative high and low bid prices are regularly quoted on the National Association of Securities Dealers Automated Quotation System.

(d) The term thrift institution shall mean a savings bank or savings and loan association organized under, or subject to the provisions of, the Banking Law.

§ 89.3 **Permitted investments**

A thrift institution may invest in, purchase or otherwise acquire any qualified equity security or any qualified debt security in accordance with the provisions of this Part.

§ 89.4 **Prohibited investments**

No thrift institution shall, pursuant to the provisions of section 235.30 or 379.5 of the Banking Law:

(a) invest in or otherwise acquire any equity security (or any security convertible into an equity security) issued by any bank, trust company, savings bank, savings and loan association, bank holding company, banking organization, life insurance company or corporation engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through participation of any type of security;

(b) invest in any security, other than a qualified debt or qualified equity security, in which a prudent person of discretion and intelligence in such matters seeking a reasonable income and preservation of capital would invest;

(c) own or acquire more than five percent of any class of the issued and outstanding equity securities of any issuer;

(d) own or acquire any equity security if such ownership or acquisition would cause (1) more than 10 percent of the thrift institution's assets to be invested in equity securities, or (2) more

than one percent of the thrift institution's assets to be invested in the equity securities of any single issuer;

(e) acquire any securities other than for investment purposes, or acquire any securities with a view to the public distribution thereof;

(f) acquire securities on margin;

(g) purchase or sell, or offer to purchase or sell, any qualified debt security or qualified equity security in violation of any applicable State or Federal securities laws; or (h) acquire any qualified debt security, other than one described in Banking Law, section 235.1, 235.2, 235.3, 235.4, 235.5, 235.11, 235.15, 235.24, 235.24-a, 235.24-b, 235.24-c or 235.27, if the amount of consideration paid for such debt security, when added to the aggregate amount of loans outstanding to the issuer of such debt security, would cause the thrift institution to be in violation of the provisions of the Banking Law (and the rules and regulations promulgated thereunder) which limit the aggregate amount of loans which a thrift institution may make to one borrower.

§ 89.5 **Investment committee**

No thrift institution shall make any investment, pursuant to the provisions of section 235.30 or 379.5 of the Banking Law and the provisions of this Part, without the prior establishment of a securities investment committee of its board of trustees or directors, a majority of the members of which committee shall not be officers or employees of the thrift institution.

§89.6 **No presumption of prudence created**

The fact that an investment is not prohibited by this Part shall not (a) create any presumption as to the prudence of such investment, or (b) constitute any evidence as to the Banking Department's position regarding the prudence of such investment.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 90

VARIABLE RATE OPEN-END ACCOUNTS ESTABLISHED BY LENDING INSTITUTIONS

(Statutory authority: Banking Law, §§ 14[**1**], 108[**5**], 202[**9**], 235[**8-b**], 352[**a**], 380-i; Personal Property Law, § 413[**3**])

Sec.
90.1 Definitions
90.2 Scope
90.3 Disclosures
90.4 Index
90.5 Notifications
90.6 Compliance with federal regulations

§ 90.1 **Definitions**

For purposes of this Part:

(a) The term *banking institution* shall mean a bank, trust company, savings bank, savings and loan association, credit union or branch of a foreign banking corporation.

(b) The term *credit account* shall mean an account which is established under a retail instalment credit agreement, as defined under section 401 of the Personal Property Law and as provided by section 413 of the Personal Property Law, which permits the customer of the banking institution to make purchases from time to time by use of a credit card or as otherwise provided.

(c) The term *lending institution* shall mean a banking institution as defined by subdivision (a) of this section or a licensed lender licensed pursuant to article IX of the Banking Law, which maintains loan accounts with customers and/or which is a financing agency, as defined under section 401 of the Personal Property Law, for the purpose of maintaining credit accounts with customers as provided in subdivision 11 of section 413 of the Personal Property Law.

(d) The term *loan account* shall mean an account established according to the provisions of subdivision 5 of section 108 of the Banking Law, or section 401.2(c)(2) of this Title, which permits the customer of the banking institution or licensed lender, respectively, to receive one or more loans or advances from time to time by use of a credit card, check or other written order or request of the customer.

(e) The term *open-end account* shall mean an account established by a lending institution pursuant to an agreement, which account may be comprised of either a loan account, a credit account or both a loan account and a credit account.

(f) The term *rate* shall mean, depending on the context, the rate of interest charged on a loan account or the rate of service charge charged on a credit account.

§ 90.2 **Scope**

This Part applies to open-end accounts which are established by lending institutions and which provide for changes in the rate charged on the account from time to time but not more often than once within any three-month period. The use of indices for such open-end accounts must comply with the provisions of Part 333 of this Title.

§90.3 **Disclosures**

All disclosures required by this Part are to be made in a single, separate document, in plain language and with captioned subdivisions for the information to be disclosed. Such disclosures shall be provided by the lending institution to a customer who is to be primarily liable on the open-end account prior to the date of the first transaction on the account in the case of a new account, or, in the case where an existing open-end account is being amended to provide for the variable rate feature, at least 30 days prior to the effective date of the variable rate amendment. Disclosure shall be made, in any reasonable order, of the following information:

(a) an indentification of the index to be used by the lending institution in connection with changing the rate on the open-end account or, if applicable, in connection with changing the individual rates on the loan account and credit account comprising the open-end account, and information where the index figures will be available;

(b) disclosure of the intervals at which the lending institution may change the rate on the open-end account (or, if applicable, the individual rates on the loan account and the credit account), the time(s) or date(s) at which the lending institution will calculate the rate or rates with respect to the index, and any conditions or events on which the changes in the rate or rates are contingent;

(c) the effect an increase in the rate or rates on the open-end account will have on the amount of the monthly payment;

(d) a hypothetical example, illustrative of the type of credit being offered, of the effect of a rate increase on monthly payments (e.g., an example showing such effect or combination of effects for the loan account and the credit account of an open-end account which is comprised of both);

(e) a history of the movements in the index selected for the open-end account, as further provided under section 90.4 of this Part; and

(f) the fact that the customer will receive prior notifications from the lending institution of increases in the rate or rates for the open-end account, and the time periods within which the notifications will be sent.

§ 90.4 **Index**

(a) General provisions. A single index for the open-end account shall be chosen from among the indices approved by the Superintendent [of Banks] pursuant to Part 333 of this Title. The rate or rates for the open-end account may be based directly on the index values or on the index values plus or minus additional percentage points; provided, however, that variations in the rate or rates shall correspond directly to movements in the index. This Part imposes no requirement on lending institutions to place limitations on the adjustment in the rate or rates for the open-end account, as such adjustment would otherwise be allowed by movements in the index. However, any lending institution which adopts limitations of any kind on changes in the rate shall provide for equal limitations on both increases and decreases. Similarly, rate adjustments may be rounded to the nearest percentage point or fraction thereof as determined by the lending institution, provided that rounding applies equally to decreases and increases in rates. Subject to the rounding provisions, increases in the index need not be used at each rate calculation date but may be accumulated once to the next rate calculation date, but decreases in the index must be reflected at each rate calculation date.

(b) Changes in the index. A lending institution may provide for a substitute index similar to the chosen index only in the event that the initial index becomes unavailable. In any other case, if the lending institution proposes to change the index used for the open-end account, application in letter form for permission to do so must be made to the[Banking Board] Superintendent, and, in the case of approval for such change, a notification of the change must be sent to customers at least 30 days prior to the change.

(c) Information and disclosures with respect to the history of the index. The disclosure shall identify the index and shall contain a statement that past changes in the index are not necessarily predictive of future changes in the index. The lending institution shall provide the high and low figures for the index and the dates at which these levels were reached, for each of the three calendar years preceding the calendar year in which the open-end account is opened or when a variable rate provision is added to an existing account. In addition, if an open- end account is opened after August 31st of any calendar year or a variable rate provision is added to become effective after August 31st of any calendar year, the disclosure shall include the high and low figures for the index's performance through June 30th of that year, and such disclosure may be used as the disclosure of the high and low in index performance for the calendar year next preceding that calendar year in which the open-end account is opened or a variable-rate provision becomes effective, prior to March 1st of that year.

§ 90.5 **Notifications**

The notification of a rate increase and of the new rate, referred to in section 90.3(f) of this Part, shall be delivered or mailed by the lending institution to a customer who is primarily liable on the open-end account no less than 25 and not more than 60 days prior to the effective date of a rate increase; provided, however, that if the open-end account provides for a monthly billing cycle, the notification may be delivered or mailed with the periodic statement for a monthly billing cycle, to become effective after the close of the next monthly

billing cycle. In the case of new customers who apply for an existing variable rate open-end account within 30 days of the time that the lending institution will increase the rate on the account but where the lending institution will not be able to provide the required written notification, the increase in the rate and the new rate shall be disclosed to the applicant prior to opening the account.

§ 90.6 **Compliance with federal regulation**

Effective November 7, 1989, lenders which comply with Section 226.5b of Regulation Z (12 CFR Part 226) will be deemed to be in compliance with Section 90.3 of this Part to the extent that Section 90.3 pertains to home equity plans subject to Section 226.5b; provided that lenders supply a copy of the disclosures required by Section 226.5b for retention by the consumer.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 91

VARIABLE RATE RETAIL INSTALMENT CREDIT AGREEMENTS ESTABLISHED BY RETAIL SELLERS
(Statutory authority: Personal Property Law, § 413[**3**])

Sec.
91.1 Definitions
91.2 Scope
91.3 Disclosures
91.4 Index
91.5 Notifications

§ 91.1 **Definitions**

For purposes of this Part:
(a) The term credit account shall mean an account which is established by a retail seller under a retail instalment credit agreement as defined under subdivision 8 of section 401 of the Personal Property Law and as provided by section 413 of the Personal Property law.
(b) The term creditor shall mean a retail seller, except that the term shall also mean a sales finance company which has purchased or acquired the credit accounts of a retail seller in the case where, by contractual agreement between the retail seller and the sales finance company, the sales finance company undertakes on behalf of the retail seller to meet the specific requirements imposed by this Part on a "creditor."
(c) The term rate shall mean the rate of service charge charged on a credit account.
(d) The term retail seller shall have the meaning assigned to it under subdivision 3 of section 401 of the Personal Property Law.
(e) The term sales finance company shall have the meaning assigned to it under sections 491 and 492(1) of the Banking Law, and applies to a person or company which purchases or acquires credit accounts established by retail sellers, provided that for purposes of this Part the term also includes a bank, trust company, savings bank or savings and loan association which purchases credit accounts established by retail sellers.

§ 91.2 **Scope**

This Part governs credit accounts which provide for changes in the rate charged on the account from time to time but not more often than once within any three-month period, and which are established by retail sellers or which are purchased or acquired by sales finance companies from retail sellers. The use of indices for such credit accounts must comply with Part 334 of this Title.

§ 91.3 **Disclosures**

All disclosures required by this Part are to be made in a single, separate document, in plain language and with captioned subdivisions for the information to be disclosed. Such disclosures shall be provided by the retail seller to a customer who is to be primarily liable on the credit account prior to the date of the first transaction on the account in the case of a new account, or, in the case where an existing credit account is being amended to provide for the variable rate feature, at least 30 days prior to the effective date of the variable rate amendment. Disclosure shall be made, in any reasonable order, of the following information:

(a) an identification of the index to be used by the creditor in connection with changing the rate on the credit account, and information where the index figures will be available;

(b) disclosure of the intervals at which the creditor may change the rate on the credit account, the time(s) or date(s) at which the creditor will calculate the rate with respect to the index, and any conditions or events on which the changes in the rate are contingent;

(c) the effect that an increase in the rate on the credit account will have on the amount of the monthly payment;

(d) a hypothetical example, illustrative of the type of credit being offered, of the effect of a rate increase on monthly payments;

(e) a history of the movements in the index selected for the credit account, as further provided under section 91.4 of this Part; and

(f) the fact that the customer will receive prior notifications from the creditor of increases in the rate for the credit account, and the
time periods within which the notifications will be sent.

§ 91.4 **Index**

(a) General provisions. A single index for the credit account shall be chosen from among the indices approved by the Superintendent [of Banks] pursuant to Part 334 of this Title. The rate for the credit account may be based directly on the index values or on the index values plus or minus additional percentage points; provided, however, that variations in the rate shall correspond directly to movements in the index. This Part imposes no requirements on creditors to place limitations on the adjustment in the rates for the credit account, as such adjustment would otherwise be allowed by movements in the index. However, any creditor which adopts limitations of any kind on changes in the rate shall provide for equal limitations on both increases and decreases. Similarly, rate adjustments may be rounded to the nearest percentage point or fraction thereof as determined by the creditor, provided that rounding applies equally to decreases and increases in rates. Subject to the rounding provisions, increases in the index need not be used at each rate calculation date but may be accumulated once to the next rate calculation date, but decreases in the index must be

reflected at each rate calculation date.

(b) Changes in the index or changes in the spread between the index values and the actual rate charged. A creditor may provide for a substitute index similar to the chosen index only in the event that the initial index becomes unavailable. In any other case, if the creditor proposes to change the index used for the credit account or to change the percentage spread between the index values and the rate charged on the account, application in letter form for permission to do so must be made to the [Banking Board] Superintendent, and, in the case of approval for such change, a notification of the change must be sent to customers at least 30 days prior to the change. In the case of a change in the percentage spread between the index values and the actual rate charged, [Banking Board] the Superintendent's permission need only be obtained where the change would be adverse to the account customer.

(c) Information and disclosures with respect to the history of the index. The disclosure shall identify the index and shall contain a statement that past changes in the index are not necessarily predictive of future changes in the index. The retail seller shall provide the high and low figures for the index and the dates at which these levels were reached, for each of the three calendar years preceding the calendar year in which the credit account is opened or when a variable rate provision is added to an existing account. In addition, if a credit account is opened after August 31st of any calendar year or a variable rate provision is added to become effective after August 31st of any calendar year, the disclosure shall include the high and low figures for the index's performance through June 30th of that year, and such disclosure may be used as the disclosure of the high and low in index performance for the calendar year next preceding the calendar year in which the credit account is opened or a variable rate provision becomes effective, prior to March 1st of that year.

§ 91.5 **Notifications**

The notification of a rate increase and of the new rate, referred to in section 91.3(f) of this Part, shall be delivered or mailed by the creditor to a customer who is primarily liable on the credit account no less than 25 and more than 60 days prior to the effective date of a rate increase; provided, however, that if the credit account provides for a monthly billing cycle, the notification may be delivered or mailed with the periodic statement for a monthly billing cycle, to become effective after the close of the next monthly billing cycle. In the case of new customers who apply for a variable rate credit account within 30 days of the time that the creditor will increase the rate on the account but where the creditor will not be able to provide the required written notification, the increase in the rate and the new rate shall be disclosed to the applicant prior to opening the account.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 92

VARIABLE RATE CLOSED-END RETAIL INSTALMENT CONTRACTS AND OBLIGATIONS ENTERED INTO BY RETAIL SELLERS

(Statutory authority: Personal Property Law, §§ 303[**4**], 404[**4**])

Sec.
92.1 Definitions
92.2 Scope
92.3 Disclosures
92.4 Index
92.5 Generally accepted actuarial methods
92.6 Notifications
92.7 Groupings of contracts or obligations

§ 92.1 **Definitions**

For purposes of this Part:

(a) The term contract or obligation shall mean a retail instalment contract as defined under subdivision 5 of section 301 of the Personal Property Law, or a retail instalment contract or a retail instalment obligation as defined under subdivisions 6 and 7 of section 401 of the Personal Property Law.

(b) The term credit service charge shall have the meaning assigned to it under subdivision 8 of section 301 of the Personal Property Law or under subdivision 11 of section 401 of the Personal Property Law.

(c) The term holder shall have the meaning assigned to it under subdivision 10 of section 301 of the Personal Property Law or under subdivision 15 of section 401 of the Personal Property Law.

(d) The term rate shall mean the rate of credit service charge charged on the contract or obligation.

(e) The term retail seller shall have the meaning assigned to it under subdivision 3 of section 301 of the Personal Property Law or subdivision 3 of section 401 of the Personal Property Law.

(f) The term retail seller or holder or the retail seller or the holder shall mean the retail seller, except that the term shall mean a holder other than the retail seller in the case where, by contractual agreement between the retail seller and such holder, the holder undertakes on behalf of the retail seller to meet the specific requirements imposed by this Part or establishes certain terms and conditions for the contract or obligation.

§ 92.2 **Scope**

This Part governs contracts or obligations which provide for changes, from time to time but not more often than once within any three-month period, in the rate of credit service charge charged with respect to a contract or obligation entered into by a retail seller or a contract or obligation purchased or acquired by a holder from a retail seller. The use of indices for such variable rate contracts or obligations must comply with Part 334 of this Title.

§ 92.3 **Disclosures**

All disclosures required under this Part are to be made in a single, separate document, in plain language and with captioned subdivisions for the information to be disclosed. Such disclosures shall be provided by the retail seller to a buyer who is to be primarily liable on the contract or obligation prior to the consummation of the contract or obligation. Disclosure shall be made, in any reasonable order, of the following information:

(a) the identification of the index to be used by the retail seller or the holder in connection with varying the rate on the contract or obligation, and where the index figures are available;
(b) the circumstances under which the rate on the contract or obligation may vary, including disclosures of the intervals at which the retail seller or the holder may change the rate, the time(s) or date(s)at which the retail seller or the holder calculates the rate with respect to the index, and any conditions or events on which the changes in rate are contingent;
(c) the effect or the combination of effects that an increase in the rate on the contract or obligation may have on the amount of the monthly payment, or the number of monthly payments or the amount of the final payment;
(d) a hypothetical example, illustrative of the type of credit being offered, of the effect or the combination of effects of a rate increase on the amount of the monthly payment, or the number of monthly payments or the amount of the final payment;
(e) the history of the movements in the index selected for the contract or obligation, as further provided under section 92.4 of this Part; and
(f) the fact that the buyer will receive prior notification from the retail seller or the holder of increases in the rate or changes in the terms of payment, and the time periods within which such notifications will be sent.

§ 92.4 **Index**

(a) General provisions. Retail sellers or holders may use any single index from among the indices approved by the Superintendent [of Banks] pursuant to Part 334 of this Title. The rate on the contract or obligation may be based directly on the index values or upon the index values plus or minus additional percentage points; provided, however, that variations in the rates shall correspond directly to the movements of the index. While only a single index shall be used for the term of a contract or obligation, the retail seller or the holder may provide for the use of a substitute index similar to the initial index in the event that the initial index should become unavailable during the term of the contract or obligation. This Part imposes no requirement on retail sellers or holders to place limitations on the adjustment in the rate, as

such adjustment would otherwise be allowed by movements in the index. Rate adjustments may be rounded, as determined by the retail seller or the holder, to the nearest percentage point or fraction thereof, provided that rounding applies equally to decreases and increases in rates. Subject to the rounding provisions, increases in the index need not be used at each rate calculation date but may be accumulated once to the next rate calculation date, but decreases in the index must be reflected at each rate calculation date.

(b) Information and disclosures with respect to the history of the index. The disclosure shall identify the index and shall contain a statement that past changes in the index are not necessarily predictive of future changes in the index. The retail seller shall provide the high and low figures for the index and the dates at which these levels were reached, for each of the three calendar years preceding the calendar year in which the contract or obligation is entered into. In addition, if the contract or obligation is entered into after August 31st of any calendar year, the disclosure shall include the high and low figures for the index's performance through June 30th of that year, and such disclosure may be used as the disclosure of the high and low in index performance for the calendar year next preceding that calendar year in which the contract or obligation is entered into, for any contract or obligation entered into prior to March 1st of that year.

§92.5 **Generally accepted actuarial methods**

The term generally accepted actuarial method, as such term is used in sections 4 and 9 of chapter 641 of the Laws of 1984 shall not include any method which results or may result in the addition of unpaid credit service charge amounts to the outstanding principal indebtedness under the contract or obligation.

§ 92.6 **Notifications**

The notification referred to in section 92.3(f) of this Part shall be delivered or mailed by the retail seller or the holder to the buyer who is primarily liable on the contract or obligation no less than 25 days nor more than 60 days prior to the effective date of the rate increase or change in payment terms. The notice shall indicate the new rate and, if applicable, the new payment amount.

§ 92.7 **Grouping of contracts or obligations**

If a retail seller or a holder adjusts the rate charged on contracts or obligations on common adjustment dates (such as the first day of January, April, July or October, or less frequently) rather than adjusting the rate of the credit service charge on an individual quarterly (or less frequent) interval measured from the date of the contract or obligation, the retail seller or the holder may on any common adjustment date increase the rate for a contract or obligation entered into within 25 days before that common adjustment date only if prior to the consummation of the contract or obligation the retail seller provides notice of the increase and of the new rate to the buyer.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 93

BORROWINGS BY SAVINGS BANKS

(Statutory authority: Banking Law, §§ 14[**1**], 234[**5-a**])

§ 93.1 **Borrowings for purposes other than repaying depositors**

A savings bank may borrow money for purposes other than repaying depositors, and pledge or hypothecate its assets as collateral for any such loans, in an amount not exceeding 50 percent of its assets.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 94

BORROWINGS BY SAVINGS AND LOAN ASSOCIATIONS

(Statutory authority: Banking Law, §§ 14[**1**], 382)

Sec.
94.1 Borrowings for the purpose of repaying shareholders and depositors
94.2 Borrowings for purposes other than repaying shareholders and depositors

§ 94.1 **Borrowings for the purpose of repaying shareholders and depositors**

A savings and loan association may borrow money for the purpose of repaying shareholders and depositors, and pledge its assets as security for the repayment thereof, in any amount.

§ 94.2 **Borrowings for purposes other than repaying shareholders and depositors**

A savings and loan association may borrow money for purposes other than repaying shareholders and depositors, and pledge its assets as security for the repayment thereof, in amounts not exceeding 50 percent of its assets.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS

PART 95

BORROWINGS BY CREDIT UNIONS

(Statutory authority: Banking Law, §454(9))

§ 95.1 **Borrowings for the purpose of repaying shareholders.**

A credit union may borrow money for the purpose of repaying shareholders, and pledge its assets to secure any such borrowing, in any amount.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS

PART 96

LENDING LIMITS FOR CREDIT UNIONS
(Statutory authority: Banking Law, § 453[**5**])

Sec.
96.1 Definitions
96.2 Scope
96.3 Fully secured loans
96.4 Unsecured loans
96.5 Loans secured by collateral other than shares of the credit union
96.6 Maximum amount of loan

§96.1 **Definitions**

For purposes of this Part:
(a) The term net worth shall have the same meaning as set forth in Section 702.2 of Part 702 of the Regulations of the National Credit Union Administration.
(b) The term loan shall mean any loan made to or guaranteed or endorsed by a member of a credit union.

§ 96.2 **Scope**

This Part applies to loans made by a credit union to its members. All such loans shall be made in compliance with this Part.

§ 96.3 **Fully secured loans**

A credit union may make loans to a member which are secured by the borrower's unhypothecated shares or by shares pledged by another member or members subject to the limitations contained in sections 454(6) and 456(2) of the Banking Law.

§ 96.4 **Unsecured loans**

A credit union may make loans to a member which are not secured by a member's unhypothecated shares or by shares pledged by other members in an amount not exceeding 15 percent of the net worth of the credit union, provided that any credit union may make unsecured loans to a member in an amount of at least $5,000.

§ 96.5 **Loans secured by collateral other than shares of the credit union**

(a) A credit union may make loans to a member which are secured by collateral other than that specified in section 96.3 of this Part in an amount not exceeding 25 percent of the net worth of the credit union or $15,000, whichever is greater, provided that the amount exceeding the greater of 15 percent of such net worth or $5,000, as the case may be, is secured by:

(1) the assignment of the cash surrender value of a life insurance policy issued by a life insurance company chartered by this State or any other state;

(2) a deposit or share account in any federally insured banking institution which does not exceed the amount of insurance coverage;

(3) common or preferred stocks listed on either the New York or American Stock Exchange, provided that only 80 percent of the market value of such stocks shall be considered as collateral;

(4) securities in which a credit union may invest pursuant to section 453(14) of the Banking Law, provided that the lower of par or market value shall be considered in evaluating such securities;

(5) a lien on tangible property appraised in good faith by the credit committee of a credit union, provided that only 80 percent of the fair market value of such property shall be considered as collateral.

(b) A credit union may make a loan to a member which is secured by a mortgage on a one- to six-family owner-occupied residence in an amount not exceeding 25 percent of the net worth of the credit union, provided that the fair market value of the residence is determined by a certified independent appraiser appointed by the board of directors or credit committee and shown in a written and signed certificate, provided that, in making any such mortgage which is a first lien, only 90 percent of the fair market value of the residence shall be considered as collateral, and provided further that any such mortgage which is not a first lien shall be made in compliance with the provisions of Part 80 of this Chapter. For the purpose of this subdivision, the term mortgage shall include a lien on an existing ownership interest in certificates of stock or other evidence of an ownership interest in, and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate.

(c) A credit union may make loans to a member in an amount not exceeding 25 percent of the net worth of the credit union, provided that the amount exceeding 15 percent of such net worth is a loan which the United States, or any state thereof, or any city, county, town, village or school district of this State, any Federal intermediate credit bank, Federal National Mortgage Association, any Federal land bank, any national mortgage association, any Federal home loan bank, the Small Business Administration or any department, agency or instrumentality of the United States or any state thereof, has agreed to pay the principal or interest thereof, or has guaranteed payment (by guaranty or commitment to purchase or otherwise) of such principal and interest, or is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest.

§ 96.6 **Maximum amount of loan**

(a) No credit union shall make a loan to a member in accordance with the provisions of section 96.4 of this Part, if upon the making of that loan, the member would be indebted to the credit union upon loans directly or indirectly made to such member under such section in an aggregate amount exceeding $1,000,000 unless it has made a prior written (including electronic) request to, and received the prior written approval of, the [superintendent] Superintendent.

(b) No credit union shall make a loan to a member in accordance with the provisions of section 96.4 or 96.5 of this Part if, upon making of that loan, the member would be indebted to the credit union upon loans directly or indirectly made to such member under such sections in an aggregate amount exceeding 25 percent of the net worth of the credit union; provided, however, that a credit union may, in any event, make a loan to a member for the minimum amounts specified in such sections.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 97
INVESTMENT IN CREDIT UNION ORGANIZATIONS

(Statutory authority: Banking Law, §§ 453[**14-a**], 460-a)

Sec.
97.1 Scope
97.2 Definitions
97.3 Permitted activities
97.4 Investment procedures
97.5 Aggregate limitation
97.6 Separate existence of credit union organizations
97.7 Examination of credit union organizations
97.8 Shared service centers

§ 97.1 **Scope**

The provisions of this Part apply to all credit unions which invest in the stock, capital notes and debentures of credit union organizations.

§ 97.2 **Definitions**

For purposes of this Part, a credit union organization shall be defined as any organization established primarily to serve the needs of its member State and Federal credit unions and whose business relates to the daily operations of the credit unions it serves.

§97.3 **Permitted activities**

A credit union organization may engage in the following activities:

(a) originating, investing in, purchasing, selling, servicing or otherwise dealing in, directly or through participation, loans of any type which may be made by a credit union;
(b) providing services primarily for other credit unions (e.g., accounting, auditing, clerical, consulting, data processing, investment advisory, managerial);
(c) providing tax preparation services;
(d) financing leases of personal property to members;
(e) issuing credit cards and engaging in credit card operations;
(f) opening and maintaining shared service centers in accordance with the provisions of section 97.8 of this Part; and
(g) any other activity specifically approved by the superintendent.

§ 97.4 **Investment procedures**

Any capital investment in credit union organizations shall be made in accordance with the procedures contained in this section.

(a) *Prior notice*. Credit unions which seek to make a capital investment in a credit union organization which will engage in any of the activities listed in section 97.3(a) to (e) of this Part shall notify the [superintendent] Superintendent, in writing, of such intention not less than 45 days prior to making such investment.

If the [superintendent] Superintendent does not object, in writing, within 45 days after receipt of a completed notice, the credit union may make the contemplated investment. The superintendent may object to such investment if it is found that it is not consistent with the purposes and intent of article 11 of the Banking Law.

(b) *Application to [superintendent] Superintendent.* Credit unions which seek to make a capital investment in a credit union organization which will engage in any activity requiring the specific approval of the [superintendent] Superintendent under section 97.3(f) of this Part shall submit a written application there for. This application shall include a full explanation and complete documentation of the activity and how that activity is associated with the daily operations of the credit union. The [superintendent] Superintendent shall approve such application if it is found that the activity is consistent with the purposes and intent of article 11 of the Banking Law and such approval may contain any restrictions and limitations as are deemed necessary. If written approval of the application is not given within 45 days of receipt of all of the information required by this Part, such application shall be deemed denied.

(c) Information required. Credit unions which give the [superintendent] Superintendent notice as specified in subdivision (a) of this section or make application to the superintendent as specified in subdivision (b) of this section shall, together with such notice or application, as the case may be, submit the information required to be submitted by a bank or trust company in accordance with sections 113.2 and 113.3 of Supervisory Procedure CB 113 of this Title.

§ 97.5 **Aggregate limitation**

The aggregate amount of a credit union's investment in the stock, capital notes and debentures of credit union organizations, together with the aggregate amount of loans to such organizations, shall not exceed three percent of the amount due to the members of the credit union on shares and deposits. For the purposes of this section, a loan shall include any loan or advance made directly or indirectly to a credit union organization (excluding accounts payable incurred in the ordinary course of business and paid within 60 days).

§ 97.6 **Separate existence of credit union organization**

Every credit union organization shall be operated in a manner which demonstrates to the public that the organization has separate corporate existence and is operationally distinct

from its member credit unions. Every instrument which evidences a borrowing by a credit union organization shall specifically indicate whether or not, and to what extent, its member credit unions are liable for such borrowing.

§ 97.7 **Examination of credit union organizations**

No credit union shall invest in or make loans to any credit union organization after the effective date of this Part, unless and until it has filed with the superintendent a letter of agreement from the credit union organization which:

(a) states that the credit union organization is subject to the general supervision of the [Banking] Department;

(b) permits periodic examinations of the credit union organization, as the [superintendent] Superintendent deems necessary; and (c) states that the credit union will reimburse the [Banking] Department for the total cost of such examinations.

§ 97.8 **Shared service centers**

(a) Definition. A shared service center is a facility staffed by employees of the credit union organization which facility uses an electronic network to provide credit union banking services to members of participating credit unions and at which a principal portion of the services provided are performed by automated teller machines or similar facilities.

(b) Permitted services. A credit union organization may offer credit union members the types of banking services authorized for electronic facilities established or shared by banking institutions pursuant to Part 73 of the General Superintendent's Regulations [of the Banking Board].

(c) Notice. In addition to the notice required by section 97.4(a) of this Part, a credit union shall advise the Superintendent in writing of the location of all shared service centers (whether within or outside New York) prior to offering its members any services at such centers.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 100

PERSONAL PROPERTY LEASING ACTIVITIES OF BANKS AND TRUST COMPANIES

(Statutory authority: Banking Law, §§ 14(1), 96(12))

Sec.
100.1 Explanatory note
100.2 Definitions
100.3 Limitations

§ 100.1 **Explanatory note**

Section 96(12) of the Banking Law authorizes banks and trust companies to acquire and lease personal property or acquire personal property subject to an existing lease together with the lessor's interest therein, subject to such regulations as may be imposed by the [Banking Board] Superintendent.

§ **100.2 Definitions**

For the purposes of this Part:
(a) The term net-lease means a lease under which the bank or trust company will not, directly or indirectly, provide or be obligated to provide for:
(1) the servicing, repair or maintenance of the leased property during the lease term;
(2) the purchasing of parts and accessories for the leased property;
(3) the loan of replacement or substitute property while the leased property is being serviced;
(4) the purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance; and
(5) the renewal of any license or registration for the property unless such action by the bank or trust company is clearly necessary to protect its interest as an owner or financier of the property.
(b) A full-payout lease is one from which the lessor can reasonably expect to realize a return of its full investment in the leased property plus the estimated cost of financing the property over the term of the lease from:
(1) rentals;
(2) estimated tax benefits; and
(3) the reasonable estimated residual value of the property at the expiration of the initial term of the lease, so long as the unguaranteed portion of such residual value does not exceed 25 percent of the original cost of the property.

§ **100.3 Limitations**

(a) All personal property leasing performed by banks or trust companies shall be on a net-lease basis.
(b) The aggregate investment by a bank or trust company in personal property subject to leases other than full-payout leases shall not exceed 10 percent of the assets of the bank or trust company.
(c) All amounts owned by lessees under leases shall be deemed a loan to the lessee and the personal property subject to a lease shall be considered to be collateral securing such loan for the purposes of Banking Law, section 103(1).

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 111

MUTUAL HOLDING COMPANIES

(Statutory authority: Banking Law, § 290)

Sec.
111.1 Scope; introduction
111.2 Subscription rights
111.3 Stock options and stock grants
111.4 Limitations on the disposition by a mutual holding company of stock of a subsidiary savings bank
111.5 Liquidation account
111.6 Reorganization into mutual holding company form
111.7 Subsequent offerings
111.8 Conversion into a stock holding company

§ 111.1 **Scope; introduction**

(a) This Part implements the [Banking Board's] Superintendent's authority under article VI-C of the Banking Law to regulate the establishment of and the operations of mutual holding companies. It addresses only those features of mutual holding companies that are not governed by other provisions of the Banking Law and regulations.

(b) The definitions contained in section 86.3 of this Title shall apply to any transaction under this Part, unless the context requires otherwise and except as provided below. The reorganization of a mutual savings bank into mutual holding company form (hereafter sometimes referred to as the 'reorganization') and the conversion of a mutual holding company into a stock holding company (hereafter sometimes referred to as the 'conversion') shall be governed by the rules prescribed in section 86.4 of this Title and, if in conjunction with a stock offering, section 86.5 of this Title, except to the extent such rules are inconsistent with the transaction and except as provided below. Any stock offering by a mutual holding company or by a savings bank subsidiary of a mutual holding company, subsequent to the reorganization but after which the mutual holding company would retain at least 51 percent of the issued and outstanding shares of the stock savings bank (a 'subsequent offering'), shall be governed by the rules prescribed in section 86.5 of this Title, except to the extent such rules are inconsistent with the transaction and except as provided below. Any stock offering by a mutual holding company or by a savings bank subsidiary of a mutual holding company, subsequent to the reorganization but after which the mutual holding company would retain at least 51 percent of the issued and outstanding shares of the stock savings bank (a 'subsequent offering'), shall be governed by the rules prescribed in section 86.5 of this Title, except to the extent such rules are inconsistent with

the transaction and except as provided below. Any 'stock offering' make pursuant to this Part shall be a public offering, and 'stock' or 'shares' includes common stock, any securities convertible into common stock, and any other security with voting power or convertible into a security with voting power. Any savings bank or mutual holding company may apply to the [superintendent]Superintendent, in

connection with a transaction authorized by this Part, for such variations from the rules prescribed by this Part or Part 86 of this Title as are necessary and proper to effectuate the transaction.

§ 111.2 **Subscription rights**

(a) Except for shares issued to a mutual holding company, and except for shares issued to the employee stock benefit plans of the stock savings bank or reserved to satisfy the stock option plans of the stock savings bank, whether adopted in connection with the reorganization, a subsequent offering or the conversion, all shares of stock issued in connection with a reorganization shall be subject to subscription rights granted to eligible account holders. As used in this Part, "shares of stock issued in connection with the reorganization of a mutual savings bank" include shares issued upon the reorganization, shares sold by a mutual holding company or a savings bank subsidiary in any subsequent offering (whether shares held by the mutual holding company or shares newly issued by the stock savings bank), shares reserved to satisfy any stock option plan, and shares sold in connection with the conversion.

(b) An eligible account holder for the purposes of this section is any depositor of a savings bank who owned in such bank one or more accounts having an aggregate balance of $100 or more on the pertinent record date. In the case of the reorganization, the record date shall be the date established by the board of trustees, which date shall be no less than 30 and no more than 120 days prior to the date on which the plan of reorganization is adopted by the trustees; in the case of any subsequent offering, the record date shall be the date established by the board of directors of the stock-form savings bank issuing new shares or board of trustees of the mutual holding company selling shares, as the case may be, which date shall be no less than 30 and no more than 120 days prior to the date on which the shares are offered; in the case of the conversion, the record date shall be the date established by the mutual holding company's board of trustees, which date shall be no less than 30 and no more than 120 days prior to the date on which the plan of conversion is adopted by the trustees.

(c) Subscription rights shall not be granted to any eligible account holder in connection with a reorganization, subsequent offering, or conversion to acquire more than five percent of the total issued and outstanding shares of the stock-form savings bank or holding company, after taking the offering into account.

§ 111.3 **Stock options and stock grants**

(a) Shares of stock issued in connection with the reorganization of a mutual savings bank may be reserved, in an amount not to exceed 10 percent of the number of shares held by persons other than the mutual holding company, to satisfy stock

option plans approved by the savings bank's stockholders and issued, in an amount not to exceed three percent of the number of shares held by persons other than the mutual holding company, pursuant to restricted stock plans approved by the savings bank's stockholders.

(b) Members of the board of trustees of the mutual holding company, whether at the time of the reorganization or thereafter, shall be ineligible to participate in any stock option plan or restricted stock plan unless such plan has been approved by the holders of a majority of the shares held by the savings bank's disinterested stockholders. For the purposes of this section, shares held by the savings bank's disinterested stockholders shall mean the issued and outstanding shares of stock of the savings bank other than shares held by the mutual holding company. Nothing contained herein shall limit the ability of a trustee of a mutual savings bank to exercise subscription rights granted pursuant to section 111.2 of this Part or to limit the ability of a trustee of a mutual holding company to make subsequent purchases of shares of stock of a subsidiary savings bank subject to section 111.6(c) of this Part.

§ 111.4 **Limitations on the disposition by a mutual holding company of stock of a subsidiary savings bank**

No mutual holding company may dispose of any interest in stock of a subsidiary savings bank except as provided in this section.

(a) A mutual holding company may sell stock of a subsidiary savings bank in a subsequent offering.

(b) A mutual holding company may pledge stock of a subsidiary savings bank to secure borrowings upon the receipt of the written approval of the superintendent so long as the terms of the pledge do not have the effect of causing a change in control of the stock savings bank.

§ 111.5 **Liquidation account**

(a) Each stock-form savings bank formed in connection with a reorganization shall establish and maintain a liquidation account in accordance with the provisions of section 86.4(f) of this Title.

§ 111.6 **Reorganization into mutual holding company form**

(a) The mutual holding company may retain or acquire assets of the mutual savings bank only to the extent permitted by the superintendent consistent with the safe and sound operation of the stock savings bank.

(b) A stock savings bank established in connection with a reorganization shall reserve no authorized but unissued shares, except as necessary to satisfy a stock option plan or issued securities convertible into stock.

(c) A plan of reorganization shall contain the provisions set out in section 86.4(e) of this Title except that it need not provide for the sale of any stock and the aggregate price of any stock sold shall bear the same proportion to total estimated pro forma market value of the

savings bank determined by an independent appraisal that the shares sold bear to the total issued and outstanding shares of the savings bank. The limitation contained in section 86.4(e)(3) of this Title shall continue until three years after conversion into a stock holding company.

§ 111.7 **Subsequent offerings**

(a) Any subsequent offering shall be made pursuant to an offering circular in the form prescribed in section 86.15 of this Title that has been approved by the [superintendent] Superintendent, whether the offering consists of newly issued shares being offered by the stock savings bank or previously issued shares being sold by the mutual holding company.

(b) The procedures to be followed in conducting a subsequent offering may, with the approval of the [superintendent]Superintendent, differ from those set out in section 86.5 of this Title so long as eligible account holders' subscription rights are not abrogated. Such differences may include, but need not be limited to, the distribution of offering circulars only to those eligible account holders who have requested them and combining a subscription offering with a public offering.

§ 111.8 **Conversion into a stock holding company**

(a) A mutual holding company may convert into a stock holding company by any method feasible under the applicable corporate laws and approved by the [superintendent] Superintendent. It must convert in the event a transaction ill result in its ownership of any savings bank subsidiary declining to less than 51 percent of the total voting power of all outstanding shares.

(b) A plan of conversion must include a provision requiring the exchange of shares of a subsidiary savings bank for shares of the resulting stock holding company in a proportion established by independent appraisals of the mutual holding company and the subsidiary savings bank.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 112
INVESTMENTS OF SAVINGS BANKS IN THE FEDERAL HOME LOAN BANK OF NEW YORK

(Statutory authority: Banking Law, § 235[**17**])

Sec.
112.1 Authorized investment

§ 112.1 **Authorized investment**

Any savings bank is permitted to purchase such additional shares of common stock of the Federal Home Loan Bank of New York as may be required for such savings bank to obtain a loan from the Federal Home Loan Bank of New York.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 114
SUPERVISION AND REGULATION OF ARTICLE XII INVESTMENT COMPANY HOLDING COMPANIES AND THEIR SUBSIDIARIES FOR PURPOSES OF THE EUROPEAN UNION FINANCIAL CONGLOMERATES DIRECTIVE

(Statutory Authority: Banking Law §§ 14(1), 14(1)(k), Article XII)

Sec.
114.1 Purpose and scope
114.2 Definitions
114.3 Examination, supervision, regulation, and enforcement authority of the Superintendent over investment company holding companies and their subsidiaries for purposes of the European Union Financial Conglomerates Directive
114.4 Supervision Agreements with financial conglomerates
114.5 Limitations

§ 114.1 **Purpose and scope**

Article XV of the Banking Law authorizes the formation of investment companies and Article XII of the Banking Law sets forth the rights and obligations of such investment companies. The purpose of this Part is to clarify the Superintendent's examination, supervision, regulation, and enforcement authority over certain financial conglomerates for purposes of carrying out equivalent supervision under the European Union Financial Conglomerates Directive.

§ 114.2 **Definitions**

For purposes of this Part:
"Banking Law" means the New York Banking Law.
"Banking organization" means all banks, trust companies, private bankers, savings banks, safe deposit companies, savings and loan associations, credit unions and investment companies organized under the Banking Law.
"Company" means a corporation, partnership, unincorporated association, limited liability company, or any other entity.
"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a company, whether by means of the ownership of the voting stock or equity interests of such company or of one or more persons controlling such company, by means of a contractual arrangement or otherwise. Control shall be presumed to exist if any company, directly or indirectly, owns, controls or holds with the power to vote ten per centum or more of the voting stock or other equity interests of any company or of any company which owns, controls or holds with power to vote ten per centum or more of the voting stock or other equity interests of such company.

"Equivalent supervision" means a supervisory and regulatory regime meeting the standards required under the Financial Conglomerates Directive.

"Financial conglomerate" means a group meeting the definition of financial conglomerate under the Financial Conglomerates Directive and having an investment company within its structure.

"Financial Conglomerates Directive" means the European Union Financial Conglomerates Directive 2002/87/EC, as it may be amended from time to time.

"Investment company" means a banking organization organized pursuant to the Banking Law and subject to the provisions of Article XII of the Banking Law.

"Investment company holding company" means the top tier corporation or other entity that controls an investment company.

"Subsidiary" means a company at least 10 per centum of the voting stock or other equity interests of which is controlled directly or indirectly by an investment company holding company.

"Supervision agreement" means an individual agreement entered into between a financial conglomerate and the Superintendent which provides for a detailed plan of supervision by the Superintendent over the financial conglomerate, including specific regulatory requirements applicable to the investment company holding company and its subsidiaries.

§ 114.3 **Examination, supervision, regulation, and enforcement authority of the Superintendent over investment company holding companies and their subsidiaries for purposes of the European Union Financial Conglomerates Directive**

To assist the [Banking] Department in carrying out equivalent supervision of a financial conglomerate for purposes of carrying out the requirements of the Financial Conglomerates Directive, the Superintendent shall have examination, supervision, regulation, and enforcement authority over an investment company holding company and any of its subsidiaries to the same extent as he or she has examination, supervision, regulation, and enforcement authority over any banking organization under the Banking Law.

This authority includes, but is not limited to, the authority to:

(1) apply Banking Law Section 36 relating to examinations and confidentiality of information to an investment company holding company and its subsidiaries, as if such entities were banking organizations;

(2) issue orders to an investment company holding company and its subsidiaries as provided in Banking Law Section 39, as if such entities were banking organizations;

(3) impose monetary penalties for violation of law or regulation, as provided in Banking Law Section 44, as if such entities were banking organizations;

(4) impose capital requirements on an investment company holding company and its subsidiaries, as appropriate or required in the judgment of the Superintendent;

(5) prescribe requirements for the keeping of books and records by the investment company holding company and its subsidiaries;

(6) require filing by the investment company holding company and its subsidiaries with the Superintendent of periodic reports of condition, reports of income, risk profiles, large exposures and such other reports as may be required by the Superintendent;

(7) levy assessments on the investment company holding company and its subsidiaries, as provided in Banking Law Section 17, as if such entities were banking organizations;

(8) issue such general or specific rules or regulations as may be necessary to effectuate the examination, supervision, regulation, and enforcement authority over investment company holding companies and their subsidiaries for purposes of meeting the requirements of equivalent supervision under the Financial Conglomerates Directive.

§ 114.4 **Supervision Agreements with financial conglomerates**

The Superintendent may enter into one or more Supervision Agreements with each financial conglomerate. Such Supervision Agreements will set forth the specific plan of supervision and detailed regulatory requirements applicable to an investment company holding company and its subsidiaries (e.g. capital requirements, reporting requirements, transactional limitations, etc.). The Superintendent may exercise enforcement authority under Banking Law sections 39 and 44 for breaches or violations of such Supervision Agreements.

Such Supervision Agreements shall be in addition to, and shall not serve as a limitation on, the Superintendent's examination, supervision, regulation and enforcement authority provided under this Part over investment company holding companies and their subsidiaries to the same extent as the Superintendent has examination, supervision, regulation, and enforcement authority over any banking organization under the Banking Law.

§ 114.5 **Limitations**

The Superintendent's examination, supervision, regulation, and enforcement authority over investment company holding companies and their subsidiaries as provided in this Part is limited to those cases in which the [Banking] Department needs to provide equivalent supervision for a specific financial conglomerate under the Financial Conglomerates Directive. The provisions of Banking Law Article XIII governing voluntary and involuntary liquidations of banking organizations shall not be applicable to investment company holding companies, although they are applicable to investment companies.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS
PART 115

ANTI-MONEY LAUNDERING PROGRAMS FOR APPLICATIONS FOR CHARTERS, ACQUISITIONS AND MERGERS AND CHANGES OF CONTROL

Sec.
115.1 Anti-money laundering programs
115.2 Charter and license applications
115.3 Merger, purchase and assumption, acquisition and change of control applications
115.4 Waivers

§ Section 115.1 **Anti-money laundering programs**

This Part is issued to assure ongoing compliance with the existing practice of the Superintendent [of Banks (the "Superintendent")] to require each applicant for a charter, or for approval of an acquisition, merger or change of control to demonstrate an anti-money laundering program that complies with applicable federal anti-money laundering laws, including a required customer identification program (31 U.S.C. Chapter 53, Subchapter 11 and 31 U.S.C. 5318(l))* and regulations promulgated by the United States Department of Treasury (31 CFR part 103.120)*, and, as appropriate, regulations of the Board of Governors of the Federal Reserve System (12 CFR parts 208.63 and 211.24)*, regulations of the Federal Deposit Insurance Corporation (12 CFR 326.8)*, and regulations of the National Credit Union Administration (12 CFR part 748.2)*. In addition, the Department seeks to assure compliance with applicable regulations issued by the Office of Foreign Asset Control of the United States Department of the Treasury ("OFAC")(31 CFR part 500 et seq)*.

(a) Each applicant shall demonstrate that it has, or on the effective date of the transaction that is the subject of the application, will have, an anti-money laundering program that complies with the applicable federal anti-money laundering laws and regulations referred to this section 115.1.

(b) For purposes of this Part, the required anti-money laundering program shall, at a minimum:

(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by bank personnel or by an outside party;

(3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide training for appropriate personnel.

(c) The anti-money laundering program shall be in writing, approved by

the institution's board of directors or equivalent body, and such approval shall be noted in the minutes of the board of directors or equivalent body.

(d) Each applicant shall also maintain, as part of its anti-money laundering program, a customer identification program that complies with the applicable federal anti-money laundering laws and regulations referred to in this section 115.1.

(e) Each applicant also shall demonstrate that it has, or on the effective date of the transaction, will have, risk-based policies, procedures and practices to ensure, to the maximum extent practicable, that its transactions comply with OFAC requirements.

(f) Compliance with the applicable federal requirements shall constitute compliance with this Part.

*For information regarding the United States Code (USC or U.S.C.), the Code of Federal Regulations and the Federal Register, see Supervisory G 1.

§ 115.2 **Charter and license applications**

All applications submitted for approval by the Department to establish a bank or trust company, private banker, savings bank, savings and loan association, safe deposit company, investment company, credit union, to establish a branch or agency in New York State of a foreign banking corporation or to establish a representative office of a foreign banking corporation shall be accompanied by information demonstrating that the applicant maintains or will maintain an anti-money laundering program that satisfies the requirements set forth in section 115.1

§ 115.3 Merger**, purchase and assumption, acquisition and change of control applications**

All applications for approval by the Department to merge with, purchase and/or assume, or acquire control (as defined in the applicable provisions of the Banking Law) of, any bank or trust company, savings bank, savings and loan association, investment company, safe deposit company or credit union shall be accompanied by information demonstrating that the applicant has or will have an anti-money laundering program that satisfies the requirements set forth in section 115.1.

§ 115.4 **Waivers**

In considering an application, the Department may determine, for good cause shown, that lack of compliance with any of the requirements of this Part does not necessarily preclude approval of the application.

TITLE 3. BANKING DIVISION
CHAPTER 1. SUPERINTENDENT'S REGULATIONS

PART 116

MAINTENANCE OF ANTI-MONEY LAUNDERING COMPLIANCE PROGRAMS BY BANKING ORGANIZATIONS AND FOREIGN BANKING CORPORATIONS LICENSED TO MAINTAIN A BRANCH OR AGENCY

Sec.
116.1 Covered entities
116.2 Anti-money laundering programs
116.3 Additional reports

§ 116.1 **Covered entities**

(a) This Part shall apply to all "Banking Organizations" and "Foreign Banking Corporations."
(b) The term "Banking Organization" shall have the meaning ascribed to it in section 2 of the New York Banking Law.
(c) The term "Foreign Banking Corporation" shall mean any branch, agency or representative office located in New York State of a foreign banking corporation licensed to maintain such a facility under Article V or Article V-B of the Banking Law.

§ 116.2 **Anti-money laundering programs**

Every Banking Organization and every Foreign Banking Corporation, in order to guard against money laundering through their institutions, shall establish and maintain an anti-money laundering program that complies with applicable federal anti-money laundering laws (31 U.S.C. Chapter 53, subchapter II)*, including the obligation to file Suspicious Activity Reports ("SARS") (31 U.S.C. 5318(g))* and a customer identification program (31 U.S.C. 5318(l))*, and regulations promulgated by the United States Department of Treasury (12 CFR part 103.120)*, and, as appropriate, regulations of the Board of Governors of the Federal Reserve Board (12 CFR parts 208.63 and 211.24)*, the Federal Deposit Insurance Corporation (12 CFR part 326.8)* and the National Credit Union Administration (12 CFR part 748.2)*. In addition, when ordered, each such entity shall provide within 30 days a written report to the Superintendent [of Banks (the "Superintendent")] detailing the extent to which it has established such a program. Every Banking Organization and Foreign Banking Corporation also shall comply with applicable regulations issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") (31 CFR part 500 et. seq.)*.
(a) For purposes of this Part, the required anti-money laundering program shall, at a minimum:
(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by bank personnel or by an outside party;

(3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide training for appropriate personnel.

(b) The anti-money laundering program shall be in writing, approved by the institution's board of directors or equivalent body, and such approval shall be noted in the minutes of the board of directors or equivalent body.

(c) Every Banking Organization and every Foreign Banking Corporation will also be required to demonstrate, as part of their anti-money laundering programs, a customer identification program that complies with the applicable federal anti-money laundering laws and regulations referred to in this section 116.1.

(d) Every Banking Organization and every Foreign Banking Corporation will further be required to demonstrate they have in place risk-based policies, procedures and practices to ensure, to the maximum extent practicable, that its transactions will comply with OFAC requirements.

(e) Every Banking Organization and every Foreign Banking Corporation shall file SARs in accordance with applicable federal law and regulations.

(f) Compliance with applicable federal requirements shall constitute compliance with this Part.

*For information regarding the United States Code (USC or U.S.C.), the Code of Federal Regulations (CFR) and the Federal Register, see Supervisory Policy G 1.

§ 116.3 **Additional reports**

Every Banking Organization and every Foreign Banking Corporation shall provide such additional reports regarding its compliance with this Part as shall be directed by the Superintendent.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER II. [SPECIAL] REGULATIONS OF THE [BANKING BOARD] SUPERINTENDENT

PART 200. EFFECT OF REPEAL OF REGULATIONS

Statutory authority: Banking Law, § 14(1)

§ 200.1 Recodification effective May 1, 1969

The repeal effective May 1, 1969 of the general and special regulations of the [Banking Board] Superintendent referred to below in subdivisions (a) and (b) of this section shall not impair or affect in any way the validity of any investment or loan made or any other action taken or not taken in compliance therewith or in reliance thereon.

(a) General regulations (as in effect on April 30, 1969):

(1) Part 2, Special Notice of Meeting of [Banking Board] Superintendent.

(2) Part 6, Federal Housing Administration Loans.

(3) Section 9.1, Export-Import Bank loans.

(4) Section 9.2, Temporary office in emergency.

(5) Section 9.3, Suspension of business during air raids or test periods.

(6) Section 9.6, R.F.C. loans.

(7) Section 9.7, Savings bonds.

(8) Section 9.8, Directors absent in armed forces.

(9) Section 9.9, Limited banking facilities.

(10) Section 9.10, Pledge of assets to secure deposits.

(b) Special regulations (as in effect on April 30, 1969):

(1) Section 35.4, Savings and Loan Bank of State of New York.

(2) Part 36, Requirement That Directors of Bank or Trust Company Hold Qualifying Shares, Relaxed.

(3) Section 38.4, Morgan & Cie. Incorporated.

(4) Part 39, Regulations Concerning Morgan & Cie. Incorporated.

(5) Part 40, Regulations Relating to Housing Projects.

(6) Section 41.1, Joseph C. Rovensky.

(7) Section 41.2, A. Richard Todd.

(8) Section 41.3, Francis S. Baer.

(9) Section 41.4, William L. Pfeiffer.

(10) Section 41.5, Robert C. Tait.

(11) Section 41.8, Raymond V. V. Miller.

(12) Section 41.11, William Rosenblatt.

(13) Section 41.13, Louis Van Damme.

(14) Section 41.15, Henry Harris.

(15) Part 42, Authorization to Purchase Capital Stock.

(16) Part 43, Savings Banks and Savings and Loan Associations--Installment Sales Contracts.

(17) Part 44, Savings Banks--Permission to Lend to Corporation Not Organized for Profit, Incorporated under Laws of Other States and of United States.

(18) Part 45, Cost of Mortgages Insured or Guaranteed by Federal Housing Administration or Veterans' Administration Acquired in Exchange for United States Government Bonds.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER II. [SPECIAL] REGULATIONS OF THE [BANKING BOARD] SUPERINTENDENT

PART 201. EXCEPTIONS FROM PART 20 (PAYMENT OF INTEREST ON COMMERCIAL BANK DEPOSITS)

Statutory authority: Banking Law, § 14 (1)(h)

§ 201.1 Textile Banking Company

The [Banking Board] Superintendent hereby suspends section 20.1 (prohibiting the payment of interest on demand deposits) of Part 20 of this Title insofar as it applies to Textile Banking Company.

§ 201.2 Macy's Bank

The [Banking Board] Superintendent hereby suspends section 20.1 (prohibiting the payment of interest on demand deposits) of Part 20 of this Title insofar as it applies to Macy's Bank.

§ 201.3 Savings Banks Trust Company

The [Banking Board] Superintendent hereby suspends section 20.2(a) (1), (2) and (3)(i) (regulating the payment of interest on time deposits, other than savings deposits) of Part 20 of this Title insofar as it applies to Savings Banks Trust Company, provided that such suspension shall be effective only so long as Savings Banks Trust Company shall accept no deposits except

(a) deposits of duly constituted mutual savings banks or arising out of the corporate business thereof and

(b) deposits of public monies.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER II. [SPECIAL] REGULATIONS OF THE [BANKING BOARD] SUPERINTENDENT

PART 203. PERMISSION TO SERVE AS DIRECTOR, OFFICER OR EMPLOYEE OF SECURITIES FIRMS

Statutory authority: Banking Law, §§ 130(4), 143(1)

Sec.
203.1
203.2
203.3-5 [Repealed]
203.6
203.7-10
203.11
203.12-14
203.15
203.17
203.18
203.19-25
203.26
203.27
203.28
203.29
203.30-31
203.32
203.33

§ 203.1 Discount Corporation of New York

The [Banking Board] Superintendent hereby grants permission for any officer, director or employee of any bank or trust company organized or existing under the laws of this State to be at the same time an officer, director or employee of Discount Corporation of New York, provided Discount Corporation of New York confines its dealings in securities to underwriting, distributing and dealing in such securities as national banks may lawfully underwrite and deal in pursuant to paragraph seventh of section 5136, Revised Statutes (12 U.S.C. sec. 24).

§ 203.2 Jock K Finlayson.

The [Banking Board] Superintendent hereby grants permission for Jock K. Finlayson to be at the same time a director of The Royal Bank of Canada Trust Company and a director of RoyFund

Ltd., Montreal, Canada, provided that there continue to be no business transactions between the fund and the trust company.

§ 203.6 Savings Banks Trust Company

The [Banking Board] Superintendent hereby grants permission for present and future directors and officers of Savings Banks Trust Company to serve at the same time directors, officers or employees of M.S.B. Fund, Inc.

§ 203.11 Samuel Rothberg

The [Banking Board] Superintendent hereby grants permission for Samuel Rothberg to be at the same time a director of Bank Leumi Trust Company of New York and president of Capital for Israel, Inc. and a director of Development Corporation for Israel.

§ 203.15 John William Campo

The [Banking Board] Superintendent hereby grants permission for John William Campo to be at the same time a director of Central State Bank and a registered representative of Ter Bush & Putnam Securities, Inc., a company engaged in the retail sale of shares of various open-end mutual funds.

§ 203.17 Henry M Marx

The [Banking Board] Superintendent hereby grants permission for Henry M. Marx to be at the same time a director of the Canadian Bank of Commerce Trust Company and a director of American Investment Trust (N.V.) Curacao, Netherlands, West Indies.

§ 203.18 Harry W Fowler, Ruppert E. Hutton, John B. Hadik and Landon Thomas, Jr.

The [Banking Board] Superintendent hereby grants permission for Harry W. Fowler, Ruppert E. Hutton, John B. Hadik and Landon Thomas, Jr. to be at the same time directors and/or officers of Fiduciary Trust Company of New York ("Fiduciary New York") and directors and/or officers of Akimco International Ltd., a Bahamian management company and a 50-percent-owned subsidiary of Fiduciary Trust Company of New York (Geneva) S.A., a wholly-owned subsidiary of Fiduciary New York.

§ 203.26 Martin M Rosen

The [Banking Board] Superintendent hereby grants permission for Martin M. Rosen to be a director of The Atlantic Bank of New York while president of Model, Roland & Co., Inc., a New

York stockbrokerage firm, chairman of The First Washington Securities Corporation, investment bankers headquartered in Washington, D.C. and chairman of First Washington International Corporation, located in New York and a member of the National Association of Securities Dealers.

§ 203.27 The Depository Trust Company

The [Banking Board] Superintendent hereby grants permission for present and future directors of The Depository Trust Company to serve at the same time as directors, officers, or employees of firms engaged in the process of underwriting, distributing or dealing in securities, provided that The Depository Trust Company confines its investments in securities to obligations of the United States government or its agencies and to obligations of any State or political subdivision thereof.

§ 203.28 Ruppert E Hutton

The [Banking Board] Superintendent hereby grants permission for Ruppert E. Hutton to be at the same time a vice president of Fiduciary Trust Company of New York and a director of Gerifonds, a management company under the laws of Switzerland.

§ 203.29 Kirk T Dornbush

The [Banking Board] Superintendent hereby grants permission for Kirk T. Dornbush to be at the same time a director of the New York Venture Fund, Inc. and a director of the First Women's Bank.

§ 203.32 Daniel Kelly

The [Banking Board] Superintendent hereby grants permission for Daniel Kelly to be at the same time a director of Hartford Trust Company and a limited partner of Salomon Brothers, a New York Stock Exchange member firm and underwriter.

§ 203.33 Triston E. Beplat

The [Banking Board] Superintendent pursuant to authority granted under section 14(1)(k) and 130(4) of the Banking Law hereby grants permission for Triston E. Beplat to be at the same time a director of Daiwa Bank Trust Company and continue to serve as a director of the Japan Fund, Inc.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER II. [SPECIAL] REGULATIONS OF THE [BANKING BOARD] SUPERINTENDENT

PART 204. AUTHORIZATION TO ACT AS FINANCIAL AGENT OF UNITED STATES GOVERNMENT

Statutory authority: Banking Law, § 508(3)

[ADD INDEX]

§ 204.1 J Henry Schroder Banking Corporation.

The [Banking Board] Superintendent hereby authorizes J. Henry Schroder Banking Corporation,

(a) to act as financial agent of the United States government in connection with the sale of United States government securities issued under the authority of the Second Liberty Bond Act, as amended, and to receive deposits arising solely as the result of subscriptions made by or through it for such United States government securities;

(b) to perform all such reasonable duties as may be required of it as depositary of the public money comprising such deposits, and as financial agency of the United States government;

(c) to pledge assets or furnish other security, satisfactory in form and amount to the Secretary of the Treasury of the United States, for the safekeeping and prompt payment of such deposits and for the faithful performance of its duties as such financial agent and

(d) to receive money for transmission and to transmit the same from the United States to any foreign country and from any foreign country to the United States.

§ 204.2 French-American Banking Corporation

The [Banking Board] Superintendent hereby authorizes French-American Banking Corporation,

(a) to act as financial agent of the United States government in connection with the sale of the United States government securities issued under the authority of the Second Liberty Bond Act, as amended, and to receive deposits arising solely as the result of subscriptions made by or through it for such United States government securities;

(b) to perform all such reasonable duties as may be required of it as depositary of the public money comprising such deposits, and as financial agent of the United States government and

(c) to pledge assets or furnish other security, satisfactory in form and amount to the secretary of the treasury of the United States, for the safekeeping and prompt payment of such deposits and for the faithful performance of its duties as such financial agent.

§ 204.3 Discount Corporation of New York

The [Banking Board] Superintendent hereby authorizes Discount Corporation of New York,

(a) to act as financial agent of the United States government in connection with the sale of United States government securities issued under the authority of the Second Liberty Bond Act, as amended, and to receive deposits arising solely as the result of subscriptions made by or through it for such United States government securities;

(b) to perform all such reasonable duties as may be required of it as depositary of the public money comprising such deposits, and as financial agent of the United States Government and

(c) to pledge assets or furnish other security, satisfactory in form and amount to the Secretary of the Treasury of the United States, for the safekeeping and prompt payment of such deposits and for the faithful performance of its duties as such financial agent.

§ 204.5 Nordic American Banking Corporation

The [Banking Board] Superintendent hereby authorizes Nordic American Banking Corporation,

(a) to act as financial agent of the United States government in connection with the sale of United States government securities issued under the authority of the Second Liberty Bond Act, as amended, and to receive deposits arising solely as the result of subscriptions made by or through it for such United States Government securities.

(b) to perform all such reasonable duties as may be required of it as depository of the public money comprising such deposits, and as financial agent of the United States government;

(c) to pledge assets or furnish other security, satisfactory in form and amount to the Secretary of the Treasury of the United States, for the safekeeping and prompt payment of such deposits and for the faithful performance of its duties as such financial agent and

(d) to receive money for transmission and to transmit the same from the United States to any foreign country and from any foreign country to the United States.

§ 204.6 Baer American Banking Corporation

The [Banking Board] Superintendent hereby authorizes Baer American Banking Corporation to receive money for transmission and to transmit the same from the United States to any foreign country and from any foreign country to the United States.

TITLE 3. BANKING [DEPARTMENT] Division

CHAPTER II. [SPECIAL] REGULATIONS OF THE [BANKING BOARD] SUPERINTENDENT

PART 206. EQUITY METHOD OF ACCOUNTING

Statutory authority: Banking Law, §§ 14(1)(g), 39(5), 104

§ 206.1 Equity method of accounting for investments in subsidiaries

Banks and trust companies, savings banks and savings and loan associations may report investments in subsidiaries in conformity with the "equity method of accounting" as approved by the Accounting Principals Board of the American Institute of Certified Public Accountants, provided, however, that once this accounting method is adopted, it shall be consistently applied and will not be discontinued without the prior approval of the Superintendent [of Banks].

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER II. [SPECIAL] REGULATIONS OF THE [BANKING BOARD] SUPERINTENDENT

PART 207. PERMISSION TO SERVE AS AN EXECUTIVE OFFICER, DIRECTOR OR TRUSTEE OF BANKS, TRUST COMPANIES, SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS, FOREIGN BANKING CORPORATIONS, NATIONAL BANKS, FEDERAL SAVINGS AND LOAN ASSOCIATIONS AND BANK HOLDING COMPANIES

Statutory authority: Banking Law, §§ 130(3)(b), 143(3)(b), 209(3), 247(5)(b), 395(5)(b), 399-a(2)

§ 207.1 The Depository Trust Company

The [Banking Board] Superintendent hereby grants permission for present and future executive officers of banks, trust companies, bank holding companies, foreign banking corporations maintaining branches in this State and national banks located in this State to serve at the same time as directors or members of committees authorized by the board of directors, or both, of The Depository Trust Company & Clearing Corporation and its subsidiaries.

§ 207.2 Freedom National Bank

The [Banking Board] Superintendent hereby grants permission for Frank R. Rosenbach a vice president of Morgan Guaranty Trust Company of New York to serve as a director of Freedom National Bank of New York.

§ 207.3 Signature Bank

The [Banking Board] Superintendent hereby grants permission for Mr. Scott Shay, an executive officer of Signature Bank, to serve as a director of Bank Hapoalim, B.M.

TITLE 3. BANKING [DEPARTMENT]DIVISION

CHAPTER II. [SPECIAL] REGULATIONS OF THE [BANKING BOARD] SUPERINTENDENT

PART 209. PROCEDURE FOR MEETINGS OF MEMBERS AND FOR NOMINATION AND ELECTION OF MEMBERS OF THE BOARD OF DIRECTORS AND CERTAIN COMMITTEES OF THE MUNICIPAL CREDIT UNION OF THE CITY OF NEW YORK WHILE THE SUPERINTENDENT IS IN POSSESSION OF THE BUSINESS AND PROPERTY THEREOF PURSUANT TO SECTION 606 OF THE BANKING LAW

Statutory authority: Banking Law, § 14(1)

§ 209.1 Definitions

For the purpose of this Part:

(a) Superintendent shall mean the Superintendent of [Banks] Financial Services of the State of New York.

(b) MCU shall mean the Municipal Credit Union of the City of New York.

§ 209.2 Application

This regulation shall govern all meetings of the members of the MCU while the superintendent is in possession of the MCU's business and property. To the extent that the bylaws of the MCU are inconsistent or conflict with the Banking Law, this Part, or any action taken by the [superintendent] Superintendent hereunder, such bylaws are superseded and shall have no force and effect.

§ 209.3 Meetings of members

(a) The annual meeting of the members of the MCU, for the purposes of electing members to serve on the board of directors, supervisory committee and credit committee, and transacting such other business as may properly come before the meeting, shall be held at such time and place as shall be fixed by the [superintendent] Superintendent.

(b) The superintendent, at least 120 days prior to the annual meeting, shall appoint a nominating committee of not less than 5 nor more than 13 members. Members of the nominating committee need not be members of the MCU. The nominating committee shall make nominations for members to serve on the board of directors and the credit and supervisory committees, and deliver such nominations in writing to the [superintendent]

Superintendent at least 60 days prior to the date set for the annual meeting.

(c) Additional nominations may be made by written petition as specified in the bylaws of the MCU, except that:

(1) the form of the petition shall be determined by the [superintendent] Superintendent and shall be printed and made available at least 75 days before the annual meeting; and

(2) signatures on nominating petitions shall be valid as long as the member signing shall have been a member of the MCU for at least 90 days immediately preceding the date of the signing of the petition, and shall have furnished on the petition next to the member's name either:

(i) the member's address;

(ii) the member's account number; or

(iii) the member's social security number.

Petitions shall be filed with the superintendent at least 40 days prior to the date set for the annual meeting.

(d) To be eligible for election to membership on the board of directors, the credit committee or the supervisory committee, a person must have been a member of the MCU at least 30 days prior to the date set for the annual meeting.

(e) Special meetings of the members may be called upon the order of the [superintendent] Superintendent or upon the written request of five percent of the members of the MCU.

(f) Notice of the time and place of the annual meeting or any special meeting of members, and of nominations received by the [superintendent] Superintendent in timely fashion, shall be sent by mail to all members and shall be posted in a conspicuous place in all offices of the MCU at least 21 days prior to such meeting.

(g) The [superintendent] Superintendent shall designate and implement such procedures for voting by proxy, at the annual meeting or any special meeting of members, as she may deem appropriate in accordance with section 464 of the Banking Law.

(h) The [superintendent] Superintendent shall determine, in her discretion, the nature and

order of the business to be conducted at all meetings of members.

(i) To be eligible to vote at a meeting of members, a person must have been a member of the MCU for at least 90 days immediately preceding the date of the meeting.

(j) The [superintendent] Superintendent shall present for approval of the membership, at the annual meeting or any special meeting of members, such proposed changes in the bylaws of the MCU as she may deem necessary or appropriate.

(k) In connection with the [superintendent's] Superintendent's possession of the business and property of the MCU, the [superintendent] Superintendent is authorized to designate and implement such other procedures pertaining to meetings of members of the MCU as she may deem necessary or appropriate to effectuate the policies declared in section 10 of the Banking Law.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER A. BANKING ORGANIZATIONS

PART 300. REPORTING OF CRIMES AGAINST BANKING INSTITUTIONS, MYSTERIOUS DISAPPEARANCES AND MISCONDUCT

Statutory authority: Banking Law, §§ 12, 37(3), 498-b, 561, 587

Sec.
300.1 Reports
300.2 Content of Reports
300.3 Subsequent reports
300.4 Other reports
300.5 When reports not required
300.6 Records to be maintained
300.7 Reports to law enforcement authorities, etc.
300.8 Confidentiality

§ 300.1 Reports

Every organization organized, licensed or registered under the Banking Law shall submit a report to the [superintendent] Superintendent immediately upon the discovery of any of the following events:

(a) embezzlement, misapplication, larceny, forgery, fraud, dishonesty, making of false entries and omission of true entries, or other misconduct, whether or not a criminal offense, in which any director, trustee, partner, officer, employee (excluding tellers), or agent of such organization is involved;

(b) embezzlement, misapplication, larceny, forgery, fraud, dishonesty, making of false entries and omission of true entries, or other misconduct, whether or not a criminal offense, in which any teller of such organization is involved;

(c) holdups, thefts, burglaries, and check kiting schemes;

(d) money payments which result in a loss by reason of having been drawn against nonexistent accounts or on nonexistent banks or by reason of the maker's signature or the signature of any endorser having been forged on checks, notes, withdrawal orders, letters of credit, bills of

lading or other documents. For purposes of this Part, a disappearance of securities shall constitute a reportable item under subdivision (a) of this section in which case the organization shall have up to five business days after discovery thereof in which to make such report except as provided in section 300.5 of this Part.

§ 300.2 Content of reports

Each report submitted pursuant to section 300.1 of this Part shall set forth all pertinent details known at the time of the report, including the following information:

(a) estimate of the amount of the loss;

(b) name, address and position of every offender, if known;

(c) statement as to insurance coverage; whether the matter has been reported to the insurance carrier and the name and address of such insurance carrier;

(d) statement, if the matter has not been reported to the insurance carrier, that the relevant contract(s) of insurance has been reviewed to make certain that such failure to report does not jeopardize all or any part of the insurance coverage;

(e) if the loss is covered by insurance and no claim has been made, the reasons therefor;

(f) statement as to whether the matter has been reported to the appropriate law enforcement authorities and the name and address of any such authority to whom a report has been submitted; and

(g) extent of reimbursement received, if any.

If any such organization is required by other governmental authority to report any of the above-mentioned events to the [Banking] Department, such report shall constitute a report pursuant to this Part so long as the information required hereunder is given.

§ 300.3 Subsequent reports

In addition to the report required by section 300.1 of this Part, such organization shall submit to the [superintendent] Superintendent further reports of any material developments relating

to the reported events, and each such report shall contain a statement of the actions taken or proposed to be taken with respect to such developments. Such organization shall also submit to the [superintendent] Superintendent a statement of the changes, if any, in its operations which are deemed desirable and feasible by its directors or trustees in order to avoid repetition of similar events.

§ 300.4 Other reports

Reports shall also be made of any other incident if there are indications that it, or any act therein involved, relates to a plan or scheme and would be of interest to similar organizations located in the same area or throughout the State.

§ 300.5 When reports not required

(a) If a loss is due to a mysterious disappearance or shortage which does not indicate misconduct - such as clerical or operational error - no report is required. Frequent or numerous "errors" by the same person or persons may, however, indicate misconduct.

(b) Organizations with assets or $ 1 billion or more are not required to report any incident specified in section 300.1(b)-(d) of this Part if the loss is less than $ 100,000; and

(c) Organizations with assets over $ 500 million but less than $ 1 billion are not required to so report if the loss is less than $ 50,000; and

(d) Organizations with assets over $ 100 million but less than $ 500 million are not required to so report if the loss is less then $ 25,000.

(e) Other organizations are not required to so report if the loss is less than $ 5,000.

§ 300.6 Records to be maintained

A record is to be maintained of all incidents described in section 300.1 of this Part whether or not they are required to be reported. Such records are to be made available for examination by the [superintendent] Superintendent or his representative.

§ 300.7 Reports to law enforcement authorities, etc

Every organization which discovers or experiences any of the incidents described in section 300.1 of this Part is strongly urged to report the details thereof to the appropriate State and local law enforcement authorities, to the local office of the Federal Bureau of Investigation, if

appropriate, and to the insurance carrier, even though such incident may not be required to be reported to the [Banking] Department because of the size of the loss involved.

§ 300.8 Confidentiality

Reports submitted pursuant to section 300.1 of this Part shall be treated as confidential pursuant to Supervisory Procedure G106.6.

TITLE 3. BANKING DIVISION

CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER A. BANKING ORGANIZATIONS
PART 301 SECURITY AT AUTOMATED TELLER FACILITIES

Statutory Authority: Banking Law, §§ 12, 75-n

Sec.
301.1 Explanation
301.2 Qualifications of experts
301.3 Size of sign
301.4 Notification of additional facilities or discontinuance of facilities
301.5 Type and frequency of video tapes or digital recording media for ATM surveillance systems
301.6 Report of compliance
301.7 Variances and exemptions
301.8 Documentation

§ 301.1 Explanation

In enacting Chapter 9 of the Laws of 1996, which, INTER ALIA, added Article II-AA to the Banking Law, the Legislature has found and declared that automated teller machines are greatly utilized by consumers and that the convenience and safety of such consumers must be ensured by establishing security measures for automated teller machine facilities operated by Federal and State chartered banking institutions. Article II-AA sets forth the specific security measures which must be employed at automated teller machines subject to its provisions. The provisions of this Part define and implement the provisions of Article II-AA.

§ 301.2 Qualifications of Experts

Any "expert" rendering an opinion pursuant to the provisions of Sections 75-c(3)(b) or 75-m(2)(c) of the Banking Law shall be licensed as a professional engineer under Article 145 of the Education Law or as an architect under Article 147 of the Education Law. In the Superintendent's sole discretion, an "expert" may be any other person who possesses experience and/or education which the Superintendent deems sufficient to give such person the competence to render an opinion under those sections of law.

§ 301.3 Size of sign

The sign in the automated teller machine facility which contains the information required by Section 75-c(3)(d) of the Banking Law shall be of such size as to make such information clearly visible from the entryway to the facility.

§ 301.4 Notification of additional facilities or discontinuance of facilities

Every banking institution which is required to file information on additional automated teller facilities with the [Banking] Department pursuant to Section 75-d of the Banking Law shall file such information within 14 business days from the date upon which the facility or facilities commences operation. Additionally, within 14 business days from the date on which it ceases to operate an automated teller machine facility which is subject to the provisions of Article II-AA, every banking institution shall notify the [Banking] Department in writing of such fact.

§ 301.5 Type and frequency of video tapes or digital recording media for ATM surveillance systems

(a) Any analog surveillance system operated by a banking institution within an automated teller machine facility under its dominion and control as required by section 75-c(1) of the Banking Law must use a commercial/industrial grade video tape, or a tape of better quality. Such tape shall be used no more than one time (or cycle), from beginning to end, in any 30-day period. Such videotapes shall not be used more than 12 times in total and must be replaced not later than 365 days from the date of its first use. Once such videotape is used, it must be retained for at least a 45-day period prior to reuse.

(b) Any digital surveillance system operated by a banking institution within an automated teller machine facility under its dominion and control as required by section 75-c(1) of the Banking Law, must retain the digitally recorded images for at least 45 days.

(c) The intent of this regulation is that a banking institution's video recording method produce a clear and undistorted picture image. A banking institution may request from the Superintendent [of Banks] approval of an alternative method of producing images which is at least as effective in meeting this objective as the measures set forth in this regulation.

§ 301.6 Report of compliance

(a)(i) The annual report of compliance required to be filed pursuant to the provisions of section 75-g of the Banking Law shall be filed within 75 days after the close of each calendar

year covering the preceding calendar year. This report shall be certified, under the penalties of perjury, and shall contain language substantially similar to the following:

I, _____, (person at the institution charged with enforcing compliance with Article II-AA of the Banking Law) hereby certify, under the penalties of perjury, that all answers contained herein are true, accurate and complete.

(1) All of the automated teller machine facilities operated by _____ (name of institution) which are subject to the provisions of Article II-AA of the Banking Law (choose one or more of the following, as applicable):

(i) _____ are in full compliance with the provisions of that Article; and/or

(ii) _____ are in full compliance with the variance or exemption (as the case may be) granted by the Superintendent for the automated teller machine facility (or facilities) located at _____ (specific address); and/or

(iii) _____ are not in compliance with the provisions of Article II-AA

(2) _____ (name of institution) uses and maintains only T-120 (commercial/industrial) grade video tapes, or better, in accordance with the provisions of section 301.5 of this Part.

(II) In cases in which some or all of the banking institutions' automated teller machine facilities are not in compliance with the provisions of Article II-AA, the annual report shall indicate the following additional information: (1) the specific address of each such facility; (2) the manner in which each such facility fails to meet the requirements of that Article and the reasons for such non-compliance and (3) a plan to remedy such non-compliance at each such facility.

(b) Upon notification of any violation of the provisions of section 75-c of the Banking Law, a report of corrective action required pursuant to section 75-j of the Banking Law shall be filed within ten business days from receipt of such notification. That report shall be certified, under the penalties of perjury, and shall contain language substantially similar to the following: I, _____, (person at the institution charged with enforcing compliance with Article II-AA of the Banking Law) hereby certify, under the penalties of perjury, that all answers contained herein are true, accurate and complete. The automated teller machine facility operated by _____ (name of institution) located at _____ (specific address) which is the subject of one or more violations of the provisions of Section 75-c of the Banking Law, is (choose one of the following):

1. _____ in full compliance with the provisions of section 75-c as of _____ (date); or

2. _____ not presently in compliance with the provisions of section 75-c and the annexed remedial plan has been implemented and shall be completed by _____ (date no later than 30 days after initial notification of violation from the [Banking] Department of Financial Services); upon the date of completion of the remedial plan, _____ (name of institution) shall file a certified report of compliance with the [Banking] Department of Financial Services stating that the location meets the requirements of section 75-c. Annexed hereto is a description of remedial plan.

§ 301.7 Variances and exemptions

A banking institution which requests a variance or exemption from the requirements of Article II-AA shall make such request in writing. All such requests will be considered on a case-by-case basis and must comply with each of the specific documentary requirements of the provisions of Section 75-m of the Banking Law.

§ 301.8 Documentation

All documentation required to be sent to the [Banking] Department under Article II-AA and this Part shall be sent to the New York State [Banking] Department of Financial Services, Criminal Investigations Bureau at the address set forth in section 1.1 of Supervisory Policy G 1.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER A. BANKING ORGANIZATIONS

PART 303. PUBLICATION OF ANNUAL FINANCIAL STATEMENTS BY MUTUAL SAVINGS BANKS AND MUTUAL SAVINGS AND LOAN ASSOCIATIONS

Statutory authority: Banking Law, §§ 12, 255-a, 405

[Add Index]

§ 303.1 General

On or prior to the 60th day after the end of each fiscal year, each mutual savings bank and mutual savings and loan association shall prepare a complete statement of its financial condition and of its income and expense as of the end of such year, in conformity with generally accepted accounting principles. The statements may also include such additional information as the institution may wish to provide its depositors.

§ 303.2 Publication

In addition to making copies of such statements available to depositors and other persons in a convenient and conspicuous location on the premises of each of its authorized places of business, other than electronic facilities, each mutual savings bank and mutual savings and loan association shall mail a copy of the statement of its financial condition and of its income and expense, to each depositor who requests it.

§ 303.3 Remuneration of management

Upon written request by a depositor or other person, the [Banking] Department shall furnish such depositor or other person with the following information with respect to the remuneration paid or to be paid to the three highest paid officers and the fees paid to the trustees or directors of the mutual organization:

(a) the name of each of the three highest paid officers, the title of the office held thereby, the salary (including deferred compensation) paid or to be paid to each such officer for the period covered by the statement, and the total annuities, pension or retirement benefit paid or proposed to be paid to such officer, either directly or indirectly, under any existing plan in the event of retirement at normal retirement date;

(b) the fee paid a trustee or director for attendance at a board or committee meeting,

specifying the various committees; and

(c) the aggregate fees paid for attendance at such board or committee meetings during the period covered.

(d) a fee in the amount specified in section 1.2 of Supervisory Policy G 1 is required for each institution for which information is requested.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER A. BANKING ORGANIZATIONS

PART 305. COMPOSITION OF BOARDS OF DIRECTORS OF BANKS AND TRUST COMPANIES

Statutory authority: Banking Law, § 7001(4)

Sec.
305.1 Explanatory note
305.2 Definition
305.3 Superintendent’s determination

§ 305.1 Explanatory note

Section 7001(4) of the Banking Law authorizes the [superintendent] Superintendent to adopt a regulation which establishes the amount of capital stock, surplus and undivided profits above which a bank or trust company may not have more than one third of its directors as active officers or employees. Any officer or employee serving as a director at the time this regulation takes effect or at the time the total capital stock, surplus and undivided profit of an institution rises above the threshold contained herewith, may continue to serve as a director until the expiration of the term for which such person was elected.

§ 305.2 Definition

For the purpose of this Part, capital notes and debentures shall be counted as capital stock. Undivided profits are defined by Supervisory Procedure CB 120.

§ 305.3 Superintendent's determination

(a) No more than one third of the entire board of directors of any bank or trust company with capital stock, surplus fund and undivided profits (as shown on the most recent call report of condition filed with the superintendent) in excess of $ 50,000,000 shall be active officers or employees of such institution.

(b) No more than one half of the entire board of directors of any bank or trust company with capital stock, surplus fund and undivided profits in excess of $ 7,500,000, but less than $

50,000,000 shall be active officers or employees of such institution.

(c) Any bank or trust company with capital stock, surplus fund and undivided profits in excess of $ 7,500,000, but less than $ 50,000,000, with more than one half of its board as active officers or directors at the time this regulation takes effect, shall have until its 1988 annual meeting to comply with this threshold.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER III. SUPERINTENDENT'S REGULATIONS

SUBCHAPTER A. BANKING ORGANIZATIONS

PART 306. CORPORATE GOVERNANCE VACANCIES ON THE BOARD OF DIRECTORS

Statutory authority: Banking Law § 7005(1)(b)

Sec.

306.1 Explanatory note regarding vacancies on the board of directors
306.2 Maximum number of vacancies on the board of directors that may be left unfilled

§ 306.1 Explanatory note regarding vacancies on the board of directors

(a) Subdivision 1 paragraph (b) of Section 7005 of the Banking Law authorizes the superintendent to adopt a regulation which establishes the circumstances under which vacancies on the board of directors of a bank, trust company, stock-form savings bank, stock-form savings and loan association may be left unfilled until the next annual election by the stockholders.

§ 306.2 Maximum number of vacancies on the board of directors that may be left unfilled

(a) Unless the [superintendent] Superintendent, in his/her discretion provides otherwise, an institution described in section 306.1 of this Part is permitted to have vacancies of up to one-third of its entire board of directors left unfilled until the next annual election by the stockholders provided that the institution:

(1) is well capitalized (within the meaning of title 12, Code of Federal Regulations* § 325.103(b)(1)); and

(2) is well managed (within the meaning of title 12, Code of Federal Regulations* § 362.17(e)). Any non-depository institution will be considered well managed if it is in satisfactory condition as determined upon examination by the [superintendent] Superintendent. In the case of an institution that has not been examined by the [superintendent] Superintendent, such institution will be considered well managed upon a finding by the [superintendent] Superintendent of managerial resources that the Superintendent determines satisfactory; and

(3) has been in existence for more than five years.

(b) Unless the [superintendent] Superintendent, in his/her discretion provides otherwise, an institution described in section 306.1 of this Part is permitted to have vacancies of up to one-

tenth of its entire board of directors left unfilled until the next annual election by the stockholders, or where a board of directors is comprised of less than ten members, no more than one vacancy on the board may be left unfilled until the next annual election by the stockholders provided that the institution:

(1) is adequately capitalized (within the meaning of title 12, Code of Federal Regulations* § 325.103(b)(2)); and

(2) is well managed (within the meaning of title 12, Code of Federal Regulations* § 362.17(e)). Any non-depository institution will be considered well managed if it is in satisfactory condition as determined upon examination by the [superintendent] Superintendent. In the case of an institution that has not been examined by the [superintendent] Superintendent, such institution will be considered well managed upon a finding by the [superintendent] Superintendent of managerial resources that the [superintendent] Superintendent determines satisfactory; and

(3) has been in existence for more than five years.

TITLE 3. BANKING [DEPARTMENT] [DIVISION]
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER A. BANKING ORGANIZATIONS

PART 307. CORPORATE GOVERNANCE ACTIONS PERMITTED TO BE TAKEN BY UNANIMOUS WRITTEN CONSENT OF BOARD OF DIRECTORS

Statutory Authority: Banking Law, §§ 12, 7008(3)

Sec.
307.1 Explanatory note regarding action permitted to be taken by unanimous written consent of a board of directors
307.2 Prerequisite requirements
307.3 Actions not permitted to be taken by unanimous written consent of a board of directors

§ 307.1 Explanatory note regarding action permitted to be taken by unanimous written consent of a board of directors

(a) Subdivision 3 of section 7008 of the Banking Law authorizes the [superintendent] Superintendent to adopt a regulation which establishes the circumstances under which any action, authorized by the organization certificate or the by-laws to be taken at a meeting of the board of directors of a bank, trust company, safe deposit company, investment company, mutual trust investment company, stock-form savings bank or stock-form savings and loan association may be taken without a meeting, provided that all members of the board consent thereto in writing and the resolution and written consents thereto are filed with the minutes of the proceedings of the board. Subdivision 3 of section 7008 of the Banking Law does not govern meetings of committees of such board of directors. Pursuant to section 7012 of the Banking Law, the conduct of committees of such a board is governed by board resolution, organization certificate, or by-laws, except as specified by section 7012. Action taken by unanimous written consent pursuant to section 307.2 of this Part shall not be considered a "meeting" for purposes of section 6.6 of this Title.

§ 307.2 Prerequisite requirements

Unless the [Superintendent] Superintendent in his/her discretion provides otherwise, an institution described in section 307.1 of this Part shall be eligible to have its board of directors take actions authorized by its organization certificate or by-laws by unanimous written consent except as specified in section 307.3 of this Part, provided that the institution:

(a) is well capitalized (within the meaning of title 12, Code of Federal Regulations* § 325.103(b)(1)); and

(b) is well managed (within the meaning of title 12, Code of Federal Regulations* § 362.17(e)). Any non-depository institution will be considered well managed if it is in satisfactory condition as determined upon examination by the [superintendent] Superintendent. In the case of an institution that has not been examined by the [superintendent] Superintendent, such institution will be considered well managed upon a finding by the [superintendent] Superintendent of managerial resources that the superintendent determines satisfactory; and

(c) has been in existence for more than five years.

§ 307.3 Actions not permitted to be taken by unanimous written consent of a board of directors

Although an institution may satisfy the prerequisite requirements specified in section 307.2 of this Part, it is prohibited from taking action by unanimous written consent of the board of directors in any of the following circumstances, unless the superintendent in his/her discretion provides otherwise:

(a) adopting or amending any policies required by any bank regulatory agency to be approved by the board of directors;

(b) submitting to the stockholders any action that requires stockholders' authorization under the Banking Law;

(c) adopting, amending or repealing of the by-laws;

(d) removing any director or filling any vacancy in the board of directors, or removing any member of a committee thereof or filling any vacancy in such a committee;

(e) fixing compensation of the directors for serving on the board or on any committee thereof;

(f) selecting or removing any of the following executive officers or the equivalent thereof: chairman of the board, chief executive officer, president, chief financial officer, chief operating officer, chief risk officer, or a member of the management committee;

(g) causing or permitting any change in the general character of the institution's business or in

the scope of its corporate powers;

(h) conveying any communication from the [Banking] Department that is required to be presented to the board of directors, pursuant to Banking Law section 11.4, or that is required to be presented to the board of directors by any other bank regulatory agency; or

(i) the taking of any action which is expressly require by any provision of the Banking Law to be taken at a meeting of the board of directors or by a specified proportion of the directors.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER III. SUPERINTENDENT'S REGULATIONS

SUBCHAPTER A. BANKING ORGANIZATIONS

PART 321. LOANS TO EXECUTIVE OFFICERS AND DIRECTORS OF BANKS AND BANK HOLDING COMPANIES

Statutory authority: Banking Law, §§ 103(8), 130(5)-(6), 142(3)(b), 143(2)

321.1 Definitions
321.2 General provisions
321.3 Loans to executive officers and directors
321.4 Additional restrictions on loans to executive officers
321.5 Reports to executive officers' indebtedness to other banks
321.6 Annual financial statements of directors
321.7 Loans to executive officers and directors of bank holding companies
321.8 Limitations on certain loans to executive officers and directors of stock-form savings banks and savings and loan associations
321.9 Compliance with Federal regulation

§ 321.1 Definitions

(a) The term bank when used in this Part, unless a different meaning appears from the context, means a bank or a trust company, a stock-form savings bank or a stock-form savings and loan association.

(b) The term executive officer means every officer who participates or has authority to participate, otherwise than in the capacity of a director, in major policy-making functions of the bank, regardless of whether he or she has an official title or whether such title contains a designation of assistant and regardless of whether he or she is serving without salary or other compensation, provided that the chairman of the board of directors, the president, every vice president, the cashier, the secretary and the treasurer are assumed to be executive officers, unless, by resolution of the board of directors or by the bylaws of the bank, any such officer is excluded from participation in major policymaking functions, otherwise than in the capacity of a director of the bank, and he or she does not actually participate therein.

§ 321.2 General provisions

(a) Except as provided in subdivision (b) of this section, each of the following shall be considered to be a loan to, extension of credit to or indebtedness of an executive officer or director of a bank under the provisions of Banking Law, sections 103(8), 130(5) and 130(6):

(1) any transaction as a result of which an executive officer or director of a bank becomes obligated, or renews his obligation, to such bank upon any note, draft, bill of exchange or other indebtedness, as maker, drawer, endorser, guarantor, surety or otherwise;

(2) any transaction as a result of which a corporation, in which such executive officer or director, or any combination of such persons, owns or controls a majority of the stock, or as a result of which a partnership in which an executive officer or director is a partner, becomes obligated, or renews its obligation, to such bank upon any note, draft, bill of exchange or other indebtedness, as maker, drawer, endorser, guarantor, surety or otherwise;

(3) any advance by means of an overdraft; and

(4) any issuance of a standby letter of credit.

(b) None of the following shall be considered to be a loan to, extension of credit to or indebtedness of an executive officer or director of a bank, under the provisions of Banking Law, sections 103(8), 130(5) and 130(6):

(1) an advance against accrued salary or other accrued compensation;

(2) an advance of unearned salary or other unearned compensation, provided the salary or other compensation so advanced is to become due and payable not more than 30 days from the date of such advance;

(3) an advance to provide for the payment of authorized travel or other expenses incurred or to be incurred on behalf of the bank;

(4) the acquisition by the bank of any check deposited in or delivered to the bank in the usual course of business, unless it results in the carrying of a cash item for or the granting of an overdraft (other than an inadvertent overdraft in a nominal amount that is promptly repaid) to (i) an executive officer or director of the bank, (ii) a corporation in which such executive officer or director, or any combination of such persons, owns or controls a majority of the stock, or (iii)

a partnership in which such executive officer or director is a partner;

(5) the acquisition of any note, draft, bill of exchange or other evidence of indebtedness (i) through a merger or consolidation of the bank with another bank or banking institution or a similar transaction by which the bank acquires assets and assumes liabilities of another bank or banking institution, or (ii) through foreclosure on collateral or similar proceeding for the protection of the bank;

(6) an advance made pursuant to an agreement evidencing a credit card, check credit or similar plan, whereby the bank is committed to extend credit up to a specified maximum amount, provided (i) the aggregate unpaid principal amount of all such advances by such bank to any person at any time outstanding shall not exceed $ 25,000, and (ii) the advance is made in compliance with section 321.3(a)(1)-(2) of this Part; nor

(7) (i) an endorsement or guarantee for the protection of a bank of any loan or other asset previously acquired by the bank in good faith; or

(ii) any indebtedness to a bank for the purpose of protecting the bank against loss or of giving financial assistance to it.

§ 321.3 Loans to executive officers and directors

(a) A bank may not make a loan to an executive officer or director unless the loan (1) is made on terms, including interest rate and collateral, that are not more favorable to the executive officer or director than those customarily offered by the bank to persons who are not executive officers or directors and who are not employed by the bank, and (2) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) Exception. Nothing in subdivision (a) of this section shall prohibit any extension of credit made pursuant to a benefit or compensation program:

(1) that is widely available to employees of the bank; and

(2) does not give preference to any executive officer or director of the bank over other employees of the bank.

(c) Prior approval. A bank may not make a loan to any of its executive officers or directors in an amount that, when aggregated with the unpaid principal amount of all other loans to that person, exceeds the higher of $ 25,000 or five percent of the bank's capital stock, surplus fund and undivided profits, unless:

(1) the loan has been approved in advance by a majority of the entire board of directors of that bank; and

(2) the interested party has abstained from participating directly or indirectly in the voting.

In no event may a bank make a loan to any one of its executive officers or directors in an amount that, when aggregated with all other loans to that person, exceeds $ 500,000, except by complying with the requirements of this subdivision.

(d) Approval by the board of directors under subdivision (c) of this section is not required for an extension of credit that is made pursuant to a line of credit that was approved under subdivision (b) of this section within 14 months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of subdivision (a) of this section.

§ 321.4 Additional restrictions on loans to executive officers

(a) A bank is authorized to make a loan to any executive officer of the bank:

(1) in any amount to finance the education of the executive officer's children;

(2) in any amount to finance or refinance the purchase, construction, maintenance or improvement of a residence of the executive officer if:

(i) the loan is secured by a first lien on the residence and the residence is owned (or expected to be owned) by the executive officer; and

(ii) in the case of a refinancing, that only the amount thereof used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this paragraph, are included within this category of credit;

(3) in any amount, if the extension of credit is secured by:

(i) a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States; or

(ii) unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned

directly or indirectly by the United States;

(iii) a perfected security interest in a segregated deposit account in the lending bank.

(4) for any other purpose not specified in paragraphs (1) through (3) of this subdivision, if the aggregate amount of loans to that executive officer under this paragraph does not exceed at any one time the higher of 2.5 percent of the bank's capital stock, surplus fund and undivided profits, or $ 25,000, but in no event more than $ 100,000.

(b) Any loan by a bank to any of its executive officers shall be:

(1) promptly reported to the board of directors;

(2) made in compliance with the requirements of section 321.3 of this Part; and

(3) preceded by the submission of a detailed current financial statement of the executive officer.

(c) For purposes herein, a residence shall include a cooperative apartment, provided the loan is secured by certificates of stock evidencing an ownership interest in the apartment together with an assignment of the proprietary lease.

§ 321.5 Reports of executive officers' indebtedness to other banks

Every executive officer of a bank who becomes indebted to any domestic or foreign banking corporation other than the bank of which he or she is an executive officer or becomes indebted to any banking institution organized under the laws of the United States, in an aggregate amount greater than the amount specified for a category of credit in section 321.4 of this Part shall, within 10 calendar days of the date of the indebtedness reaches such a level, make a written report to the board of directors of the bank of which he or she is an executive officer, stating the date and the amount of such loan or indebtedness and the security therefor. The reporting requirement may be satisfied by making the report to the secretary of the board within the allotted time and the subsequent presentation of the report to the board at its next scheduled meeting.

§ 321.6 Annual financial statements of directors

Every director of a bank who is obligated on any loan or extension of credit made by such bank to such director or to any other individual, partnership or unincorporated association or

corporation, shall file a statement of his or her financial condition with such bank at least once in each year and at such other times as the [superintendent] Superintendent may require. This section shall not apply to directors whose obligations are secured by collateral having an ascertained market value of at least 15 percent more than the amount of such obligations.

§ 321.7 Loans to executive officers and directors of bank holding companies

(a) The provisions of sections 321.1(b), 321.2, 321.3 and 321.4 of this Part shall apply to any loan made by a bank subsidiary of a bank holding company to an executive officer or director of the bank holding company.

(b) The provisions of section 321.6 of this Part shall apply to any director of a bank holding company who becomes obligated on any loan or extension of credit to any banking subsidiary of a bank holding company.

§ 321.8 Limitations on certain loans to executive officers and directors of stock-form savings banks and savings and loan associations

A stock-form savings bank or a stock-form savings and loan association may not make a loan secured by an interest in improved or unimproved real property to its executive officer or director if the amount of that loan, aggregated with the amount of all such other loans to that executive officer or director exceeds 15 percent of the bank's capital, surplus account and undivided profits.

§ 321.9 Compliance with Federal regulation

Banking organizations that comply with regulation O of the Board of Governors of the Federal Reserve System (12 CFR Part 215) shall be deemed to be in compliance with this Part. In addition to complying with regulation O, such banking organizations shall remain subject to section 321.6 or 321.7 of this Part, as the case may be.

Title 3. BANKING DIVISION

CHAPTER III. SUPERINTENDENT'S REGULATIONS

SUBCHAPTER A. BANKING ORGANIZATIONS

PART 322. PLEDGE OF ASSETS AND MAINTENANCE OF ASSETS BY LICENSED FOREIGN BANKING CORPORATIONS IN NEW YORK

Section statutory authority: Banking Law, §12, 202-b(1)-(2), 204

Sec.

322.1 Deposit of assets; amount of assets to be deposited
322.2 Assets that may be deposited; conditions and limitations
322.3 Eligible assets
322.4 Liabilities requiring cover
322.5 Record of assets and liabilities
322.6 Definition of affiliate
322.7 Definition of well-rated foreign banking corporation

§ 322.1 Deposit of assets; amount of assets to be deposited

(a) Upon opening a branch or branches or agency or agencies in this State and at all times thereafter, except in the instance where the deposit accounts at a branch or branches of a foreign banking corporation are insured by the Federal Deposit Insurance Corporation, each foreign banking corporation shall keep assets on deposit in accordance with Part 51 of this Title ("assets"), in an amount, based upon the lower of principal amount or fair (market) value, equal to the greater of:

(1) one percent of average total liabilities for the previous month of such branch or branches or agency or agencies, including liabilities of an international banking facility maintained by such branch or branches or agency or agencies, but excluding amounts due and other liabilities to other offices, agencies, branches and affiliates as defined in section 322.6 of this Part, of such foreign banking corporation; or

(2) $ 2 million.

(b) A foreign banking corporation opening its initial branch or agency shall deposit assets based upon the branch's or agency's projection of total liabilities at the end of its first year of operation.

(c) For purposes of section 322.1(a)(1) of this Part, liabilities arising from "qualified financial contracts" as that term is defined in section 618-a.2(e) of the Banking Law, may be excluded

from the calculation of total liabilities to the extent such liabilities are secured by collateral within the meaning of section 618-a.2(d) of the Banking Law, unless a branch or agency has been notified otherwise by the [superintendent] Superintendent.

(d) For purposes of section 322.1(a)(1) of this Part, except as otherwise provided in this Part, calculation of liabilities shall be in accordance with the instructions in the FFIEC 002 Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks ("Call Report").

(e) For purposes of section 322.1(a)(1) of this Part, the asset pledge calculation shall be on the same basis on which quarterly averages are calculated for Call Report purposes (currently, the average of liabilities subject to asset pledge as of the close of business on each Wednesday during the previous month.) The pledged assets, as well as the asset pledge report required under section 322.5(c) of this Part, shall be due on the fifth business day immediately following the end of the monthly period for which the calculation is made.

(f) For a well-rated foreign banking corporation as defined in section 322.7 of this Part, the maximum amount required to be deposited pursuant to paragraph (a)(1) of this section shall be calculated according to the following schedule, as a percentage of average total liabilities for the previous month of such branch or branches or agency or agencies, including liabilities of an international banking facility maintained by such branch or branches or agency or agencies, but excluding amounts due and other liabilities to other offices, agencies, branches and affiliates as defined in section 322.6 of this Part, of such foreign banking corporation:

(1) one percent of the first $ 1 billion;

(2) 3/4 of one percent of the next $ 4 billion;

(3) 1/2 of one percent of the next $ 5 billion;

(4) 1/4 of one percent of any additional liabilities;

(5) provided, however, that in no event shall the maximum amount required to be deposited hereunder exceed one hundred million dollars ($ 100,000,000).

§ 322.2 Assets that may be deposited; conditions and limitations

(a) The following categories of assets are eligible for pledge, to the extent they are included on the [superintendent's] Superintendent's Asset Pledge List ("APL"). The APL will be made available to the public by the [Banking] Department and posted on the [Banking] Department's website.

(1) Specified Assets. Obligations specified in Banking Law section 202-b(1) (the "Specified Assets").

(2) Permitted Assets. Assets permitted as eligible for pledge (the "Permitted Assets") shall include:

(i) commercial paper, provided such paper is accorded the highest rating of a rating service designated by the [Banking Board] Superintendent pursuant to section 61.1 of this Title. In the event that an issue of commercial paper is rated by more than one designated rating service, it must have the highest rating of each;

(ii) negotiable certificates of deposit issued by an unaffiliated domestic banking institution or a domestic office of an unaffiliated foreign banking corporation; and

(iii) bankers' acceptances issued by an unaffiliated domestic banking institution or a domestic office of an unaffiliated foreign banking corporation.

(3) Additional Assets. Additional Assets that may be included on the superintendent's APL (the "Additional Assets").

Under special circumstances, the superintendent may approve otherwise ineligible assets upon written application by the foreign banking corporation.

(b) Unless the superintendent specifically permits otherwise, the following conditions and limitations shall apply to the asset pledge:

(1) All assets must be payable in the United States in United States dollars.

(2) Additional assets may not comprise more than 50 percent of the foreign banking corporation's total asset pledge requirement.

(3) For all foreign banking corporations, additional assets may include assets that have been accorded an investment grade rating of a rating service designated by the [Banking Board] Superintendent pursuant to section 61.1 of this Title. In the event that an asset is rated by more than one designated rating service, it must have received at least an investment grade rating from each.

(4) No foreign banking corporation may pledge any obligations issued or guaranteed by an entity located or domiciled in, or any governmental entity of, the home country of such foreign banking corporation (same-country obligor).

(5) With respect to any asset, the [superintendent] Superintendent may determine that, for purposes of this Part, such asset shall be valued at other than face value, or shall be held in such form or subject to such conditions as the [superintendent] Superintendent may prescribe. The [superintendent] Superintendent may expressly disallow one or more otherwise eligible assets, either for all institutions or for specific institutions. All assets shall be subject to any additional conditions or limitations as determined by the [superintendent] Superintendent with respect to such assets.

§ 322.3 Eligible assets

For the purpose of section 202-b(2) of the Banking Law and Part 52 of this Title, the term eligible assets shall include any assets (reduced by the amount of any specifically allocated reserves established on the books in connection with such assets) held in this State and recorded on the general ledger of a licensed branch or agency of the foreign banking corporation, subject, however, to the following adjustments and situations:

(a) Marketable debt securities shall be allowed at their principal amount or market value, whichever is lower.

(b) Restructured foreign debt bonds backed by United States Treasury obligations (commonly known as "Brady Bonds"), whether carried on the books of the branch or agency as loans or securities, shall be allowed at their book value or market value, whichever is lower.

(c) Equity securities shall be ineligible.

(d) The balance from time to time of any assets classified loss, doubtful or substandard at the preceding examination by the [superintendent] Superintendent, any other regulatory agency, outside accountants or the bank's internal loan review staff, shall be ineligible to the extent of 100 percent, 50 percent and 20 percent, respectively. Assets classified value impaired shall be ineligible to the extent of 100 percent of the amount of allocated transfer risk reserve which would be required for such exposure at a domestically chartered bank and 20 percent of any residual exposure. For assets classified at the preceding examination by the [superintendent] Superintendent or any other regulatory agency, if the deficiency or defect giving rise to the classification shall be removed subsequent to the examination, the department, will, upon written request supported by appropriate documentation, reconsider the classification.

(e) Accrued income on assets classified loss, doubtful, substandard or value impaired shall be ineligible.

(f) The balance from time to time of any other asset or asset category disallowed at the preceding examination or by direction of the [superintendent] Superintendent for any other reason shall be treated as ineligible until the underlying reasons for the disallowance have been removed.

(g) All amounts due from the home office, other offices and affiliates as defined in section 322.6 of this Part, including income accrued but uncollected on such amounts, shall be ineligible, except that upon a letter application to the department and the [superintendent's] Superintendent's prior approval, all amounts due from other offices located within the United States shall be considered eligible. Approval shall be based in part upon the report of examination submitted pursuant to section 36 of the Banking Law and the letter application shall constitute correspondence which concerns such examination for purposes of section 36(10) of the Banking Law.

(h) Precious metals shall be considered eligible to the extent of 75 percent of the market value.

(i) Prepaid expenses and unamortized costs, furniture and fixtures and leasehold improvements shall be ineligible.

(j) Real estate located in New York and carried on the accounting records as an asset shall be considered eligible at net book value or appraised value, whichever is less.

§ 322.4 Liabilities requiring cover

For the purposes of this Part and Part 52 of this Title, liabilities requiring cover shall include all liabilities of a foreign banking corporation appearing in the books, accounts and records of its agency, agencies, branch or branches in this State as liabilities of such agency, agencies, branch or branches, including acceptances and such other liabilities (including contingent liabilities) as the [superintendent] Superintendent shall determine, but excluding the following:

(a) amounts due and other liabilities to other offices, agencies, branches and affiliates as defined in section 322.6 of this Part of such foreign banking corporation, including unremitted profits; and

(b) reserves for possible loan losses and other contingencies.

§ 322.5 Record of assets and liabilities

(a) Except as provided in section 322.5(c) of this Part, every foreign banking corporation licensed to maintain one or more agencies or branches in this State shall maintain a record of the liabilities of the foreign banking corporation appearing in the books, accounts and records of its agency, agencies, branch or branches in this State as liabilities of such agency, agencies, branch or branches as of the close of business on each Wednesday as determined in accordance with section 202-b(2) of the Banking Law and section 322.4 of this Part (liabilities requiring cover) and the assets as determined in accordance with section 202-b(2) of the Banking Law and section 322.3 of this Part (eligible assets). The record shall be written in ink or maintained in other permanent legible form and be retained until the conclusion of the next examination of the agency or branch by the [Banking] Department. A foreign banking corporation authorized to maintain more than one agency or branch in this state shall maintain the record on a consolidated basis. In the event that such corporation is authorized to maintain both insured and uninsured branches, a separate record may be maintained for each such category. No specific format for the record is prescribed. It shall, however, contain such information in sufficient detail as will permit ready verification of its accuracy.

(b) Each foreign banking corporation licensed to maintain one or more branches or agencies in this State shall maintain, in addition to the record required to be maintained by subdivision (a) of this section, an itemized record of assets deposited for the account of the Superintendent [of Banks] pursuant to section 202-b(1) of the Banking Law and section 322.1 of this Part. The record shall include the value of assets deposited, at principal or fair (market) value, whichever is lower.

(c) Each foreign banking corporation licensed to maintain one or more branches or agencies in this State shall, in a form and at an interval to be prescribed by the [superintendent] Superintendent, prepare a report showing the assets deposited pursuant to section 202-b(1) of the Banking Law and section 322.1 of this Part and, except for those well-rated foreign banking corporations eligible for and having on deposit eligible assets at least in the amount of the cap provided in section 322.1(f) of this Part, the calculation of the pledge required under section 322.1 of this Part.

(d) The records required to be maintained by subdivisions (a) and (b) and the report required by subdivision (c) of this section shall be authenticated by the signature of a duly authorized officer of the agency or branch.

§ 322.6 Definition of affiliate

For purposes of this Part,

(a) Affiliate means any person, or group of persons acting in concert, that controls, is controlled by or is under common control with such foreign banking corporation.

(b) Control means any person, or group of persons acting in concert, directly or indirectly:

(1) owning, controlling or holding with power to vote, more than 50 percent of the voting stock of a company;

(2) having the ability in any manner to elect a majority of the directors of a company; or

(3) otherwise exercising a controlling influence over the management and policies of a company.

(c) A controlling influence shall be presumed to exist when any person, or group of persons acting in concert, directly or indirectly:

(1) is a general partner of the company;

(2) has the power to direct the management or policies of the company; or

(3) owns, controls or holds with power to vote, 25 percent or more of the voting stock or 40 percent or more of any class of stock of the company and is subject to one of the control factors in subparagraphs (i) through (viii):

(i) is one of the two largest holders of any class of voting stock of the company;

(ii) holds more than 50 percent of the total shareholders' equity of the company;

(iii) holds more than 75 percent of the combined debt securities and stockholders' equity of the company;

(iv) is a party to any agreement pursuant to which it possesses a material economic stake in the company resulting from a profit-sharing arrangement, use of common names, facilities or personnel, or the provision of essential services to the company;

(v) would have the ability, other than through the holding of revocable proxies, to direct the vote of 50 percent or more of any class of the company's voting stock or to vote 50 percent or more of a class of voting stock in the future upon the occurrence of a future event;

(vi) has the power to direct the disposition of 50 percent or more of any class of the company's voting stock in a manner other than a widely dispersed or public offering;

(vii) would constitute or designate its representative or nominee as more than one member of the company's board of directors; or

(viii) would serve or designate its representative or nominee to serve as the chairman of the board of directors, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer, or in any position with similar policymaking authority in the company.

(d) For purposes of this definition, the term person shall mean a corporation, unincorporated association, partnership, or any other entity or individual. The term company includes the foreign banking corporation.

§ 322.7 Definition of well-rated foreign banking corporation.

(a) For purposes of this Part, "well-rated foreign banking corporation" means a foreign banking corporation designated as such by the [superintendent] Superintendent. Such an institution must be considered by the [superintendent] Superintendent generally to be well-capitalized and well-managed. The [superintendent] Superintendent will consider the following factors, among others, in making such determination:

(1) Whether the parent foreign bank on a consolidated basis maintains a well-capitalized position (currently, tier 1 and total risk-based capital ratios of 6 and 10 percent, respectively, as calculated in accordance with standards set by the Basel Committee on Banking Supervision);

(2) The Strength of Support Assessment ("SOSA") rating issued by the federal banking agencies);

(3) The composite rating for the foreign banking corporation's New York office or offices (such rating should be no lower than a "2"); and

(4) Whether there are any formal supervisory, regulatory, or enforcement actions outstanding against the New York office or offices.

(b) A well-rated foreign banking corporation shall promptly inform the [superintendent] Superintendent if it becomes aware of the existence of any fact that could cause its loss of status as "well-rated". The [superintendent] Superintendent will also notify the foreign banking

corporation of its loss of status as a well-rated institution when such determination is made. Upon a foreign banking corporation being informed by the [superintendent] Superintendent that it is no longer deemed "well-rated" for purposes of this Part, the foreign banking corporation shall have 30 days to comply with the requirements of this Part applicable to those institutions not designated as "well-rated", unless otherwise directed by the [superintendent] Superintendent.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER A. BANKING ORGANIZATIONS

PART 323. ACCEPTANCE OF DEPOSITS FROM NONCITIZENS AND NON-U.S. RESIDENTS BY LICENSED AGENCIES OF FOREIGN BANKING CORPORATIONS

Statutory authority: Banking Law, § 202-a(1)(c)

Sec.
323.1 Explanation
323.2 Definition
323.3 Notification that deposits are uninsured

§ 323.1 Explanation

Section 202-a(1)(c) of the Banking Law permits a licensed agency of a foreign banking corporation to accept deposits other than from citizens or residents of the United States as the superintendent shall define. The purpose of this Part is to define the term residents of the United States as used therein, and to provide for appropriate disclosures as to the uninsured status of such deposits. Unlike large-denomination obligations which may be issued to corporations and other business entities pursuant to section 202-a(1)(b) of the Banking Law and Part 81 of this Title, the deposits which may be taken pursuant to the terms of this Part 323 may be in amounts of less than $ 100,000 and may be taken from natural persons as well.

§ 323.2 Definition

For purposes of section 202-a(1)(c) of the Banking Law, the term resident of the United States shall mean:

(a) any individual residing in the United States;

(b) any corporation, partnership, association or other entity organized in the United States; or

(c) any branch or office located in the United States of any entity that is not organized in the United States.

§ 323.3 Notification that deposits are uninsured

At or prior to the time a licensed agency of a foreign bank shall open any deposit account under $ 100,000 for a depositor not a citizen or resident of the United States, pursuant to

section 202-a(1)(c) of the Banking Law, and this Part, it shall notify the depositor that the agency's deposits are not insured by the FDIC. Such notification shall be in writing and shall appear in a conspicuous place on the signature card or other related documentation pertaining to the opening of the account.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER A. BANKING ORGANIZATIONS
PART 324. REPORTS TO DIRECTORS AND TRUSTEES

Statutory authority: Banking Law, §§ 121, 252

Sec.
324.1 Purpose
324.2 Definitions
324.3 General provisions

§ 324.1 Purpose

Sections 121 and 252 of the Banking Law provide for a monthly report to the board of directors or the executive committee of such board of each bank or trust company or savings bank containing certain information as listed by the statute except as otherwise provided by the [superintendent] Superintendent by regulation. This Part establishes the requirements as to the minimum content of such monthly report. Nothing in this Part shall be deemed to imply that the responsibility of management to keep its directors informed in the areas of loans and investments will be met solely through the fulfillment of these reporting requirements. It is emphasized that it remains the responsibility of management to keep directors informed of any important developments in these areas, and directors continue to have the responsibility to keep so informed.

§ 324.2 Definitions

For the purpose of this Part:

(a) The term *capital funds* shall mean the total of the combined capital stock (including capital notes and debentures authorized under section 27.1 of this Title), surplus fund and undivided profits (as defined by Supervisory Procedure CB 120) of a bank, trust company or stock-form savings bank. In the case of a mutual savings bank the term capital funds shall mean the net worth (as defined in sections 234(5) and 244(4) of the Banking Law).

(b) The term *loan* shall include all discounts, loans or other advances and such other extensions of credit, including certain letters of credit, as are considered to be loans for the purpose of section 103(1) of the Banking Law.

(c) The term *obligations of the U.S. Government* shall mean all securities issued by or

unconditionally guaranteed in full as to principal and interest by the U.S. Government or any agency of the U.S. Government.

(d) The term *classified loans* shall mean all loans adversely classified in the most recent State or Federal report of examination, including those loans classified under the Statistical Sampling and Shared National Credit programs, and all loans adversely classified at the most recent Directors' Examination conducted pursuant to sections 122 and 123 or 254 of the Banking Law.

(e) The term *Federal funds* shall have the same meaning as given in section 103(1)(h) of the Banking Law.

(f) The term *broker/dealer* shall have the same meaning as that contained in section 224.5(C) of Federal Reserve Board Regulation X.

(g) The terms *director, directors and board of directors* shall, in the case of mutual savings banks, refer to trustees and boards of trustees thereof.

§ 324.3 General provisions

The monthly report to the board of directors shall contain a written report of the following transactions which have taken place since the date of the last preceding similar report:

(a) (1) Any purchase of the securities of any one issuer (except those which are obligations of the U.S. Government) if it, by itself or together with any previously unreported purchases, brings the total holdings of securities of that issuer to an amount equal to, or in excess of, 2 1/2 percent of capital funds.

(2) Any increase to a securities holding previously reported (except those which are obligations of the U.S. Government) if it, together with any other increases since the item was last reported, is in an amount equal to, or in excess of, one percent of capital funds. However, increases need not be reported if the total holdings of securities of that issuer during the period since the last similar report was prepared did not equal or exceed 2 1/2 percent of capital funds.

(b) The maximum overnight advance of Federal funds to any single obligor if this amount equals or exceeds five percent of capital funds.

(c) Any renewal, increase, or new loan, including the maximum overdraft, made to an entity with a classified loan if it, together with any other renewals, increases, or new loans since the item was last reported, is equal to, or in excess of, 1/10 of 1 percent of capital funds. However, these items need not be reported if the total loan to that entity is not equal to, or in excess of, 1/2 of 1 percent of capital funds.

(d) (1) Every other loan made or renewed, together with the maximum overdraft, if it, by itself

or together with any other previously unreported loans; brings the aggregate loan to any one entity to an amount equal to, or in excess of, 2 1/2 percent of capital funds. In the case of loans to broker/dealers which are fully secured by readily marketable securities only the maximum amount outstanding during the period need be reported.

(2) Any increase to a loan previously reported if it, together with any other increases since the item was last reported, is in an amount equal to, or in excess of, one percent of capital funds. However, increases need not be reported if the total amount outstanding during the period since the last similar report was prepared did not exceed 2 1/2 percent of capital funds. The aggregate loan to any one entity shall be computed as provided in section 103(1)(e) of the Banking Law.

(e) Securities holdings of, and loans to the same entity, must be aggregated for the purpose of the threshold set under subdivisions (a), (c) and (d) of this section.

TITLE 3. BANKING [DEPARTMENT] DIVSION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER A. BANKING ORGANIZATIONS
PART 325. NONACCRUAL OF INTEREST

Statutory authority: Banking Law, §§ 12, 109(2)(a), 244(1)(b), 386(1)(a)

Sec.
325.1 Explanatory note
325.2 Nonaccrual threshold
325.3 Policy

§ 325.1 Explanatory note

(a) Section 109(2)(a) of the Banking Law prohibits a bank or trust company from accruing interest on interest-bearing assets upon which a default of principal or interest has existed for a period which shall be determined by the [superintendent] Superintendent, unless such assets are fully secured as to both principal and interest.

(b) Section 244(1)(b) of the Banking Law permits the [superintendent] Superintendent to direct that certain portions of interest accrued but uncollected by a savings bank be excluded from income.

(c) Section 386(1)(a) of the Banking Law prohibits a savings and loan association from accruing interest upon any asset upon which a default exists. For the purpose of this section of the Banking Law, a default is deemed to exist when payment of principal or interest is 90 days or more past due and the asset is not fully secured as to both principal and interest.

§ 325.2 Nonaccrual threshold

(a) For the purpose of section 109(2)(a) of the Banking Law, the period of time beyond which a bank or trust company must not accrue interest upon a defaulted asset will be 90 days, except as noted in section 325.3 of this Part.

(b) For the purpose of sections 244(1)(b) and 386(1)(a) of the Banking Law, savings banks and savings and loan associations, respectively, will be subject to the same rules as banks and trust companies regarding the nonaccrual of interest.

§ 325.3 Policy

(a) A debt will be considered fully secured for the purpose of this section if it is secured (1) by

collateral in the form of liens on or pledges of real or personal property, including securities, that have a realizable value sufficient to discharge the debt (including accrued interest) in full, or (2) by the guaranty of a financially responsible party.

(b) Loans which reach nonaccrual status may not be restored to accruing status until all delinquent principal and/or interest has been brought current, or the loan becomes fully secured as to both principal and interest. Notwithstanding the foregoing, a loan may be restored to accrual status in accordance with applicable regulatory accounting principles.

(c) The date on which a loan reaches nonaccrual status is determined by the contractual terms of the loan. If a loan reaches nonaccrual status on a date which falls between the dates on which the bank or trust company closes its books, it remains on nonaccrual status until it meets the criteria for restoration to accruing status.

(d) Consumer loans and loans secured by one to four family residential properties, on which principal or interest is due and unpaid for 90 days or more, are not required to be placed in nonaccrual status. Such loans should, however, be subject to other alternative methods of evaluation to assure that the institution's net income is not materially overstated.

(e) The reversal of previously accrued but uncollected interest applicable to any asset placed in nonaccrual status, and the treatment of any subsequent payments as either principal or interest, should be handled in accordance with generally accepted accounting principles. Acceptable accounting treatment includes a reversal of all previously accrued but uncollected interest applicable to assets placed in a nonaccrual status against appropriate income and balance sheet accounts.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER A. BANKING ORGANIZATIONS

PART 326. MAINTENANCE OF RESERVES BY CREDIT UNIONS

Statutory Authority: Banking Law, §§ 12, 458-a

Sec.

326.1 Applicability
326.2 Reserve accounts
326.3 Definition

§ 326.1 Applicability

The provisions of this Part shall apply to all net worth reserve accounts required to be established and maintained by credit unions.

§ 326.2 Reserve accounts

Credit unions shall establish and maintain such net worth reserve accounts as are required for Federally chartered credit unions pursuant to Title 12 U.S.C. 1790d and any regulations promulgated thereunder by the National Credit Union Administration.

§ 326.3 Definition

(a) The term net worth shall mean the retained earnings balance of the credit union at the end of a quarterly period as determined under generally accepted accounting principles. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by the management of a credit union or regulatory authorities. Only undivided earnings and appropriations of undivided earnings shall be included in net worth. Net Worth shall not include the allowance for loan and lease losses account. In the case of a credit union that qualifies to be designated as a low income credit union, net worth shall also include secondary capital accounts that are uninsured and subordinate to all other claims of creditors, shareholders and the National Credit Union Share Insurance Fund.

(b) In the event that a different definition of net worth is contained in 12 CFR 702.2, this section shall be deemed to define net worth as set forth in such section.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER III. SUPERINTENDENT'S REGULATIONS

SUBCHAPTER A. BANKING ORGANIZATIONS

PART 327. INVESTMENTS BY CREDIT UNIONS IN THE SHARES OF CORPORATE CREDIT UNIONS LOCATED IN THIS STATE

Statutory authority: Banking Law, §§ 12, 454, 454(14)

Sec.

327.1 Investments by credit unions in the shares of corporate credit unions located in this State

§ 327.1 Investments by credit unions in the shares of corporate credit unions located in this state

Any credit union that seeks to invest in the shares of a state or Federal corporate credit union located in this state in an amount that exceeds fifty percent of its total capital or the insured limit, whichever is greater, shall give the [superintendent] Superintendent prior written notice of its intent to make such investment. If the [superintendent] Superintendent shall find that the proposed investment is consistent with the declaration of policy set forth in Section 10 of the Banking Law, he or she shall, within thirty days after receipt of such notice, notify the credit union in writing that such investment may be made or that an additional period of time, not to exceed sixty days, is required to properly make a determination.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER A. BANKING ORGANIZATIONS

PART 333. INDICES WHICH MAY BE USED IN CONNECTION WITH VARIABLE RATE CLOSED-END PERSONAL LOANS MADE BY LENDING INSTITUTIONS PURSUANT TO PART 33 OR IN CONNECTION WITH VARIABLE RATE OPEN-END ACCOUNTS ESTABLISHED BY BANKING INSTITUTIONS PURSUANT TO PART 90

Statutory authority: Banking Law, §§ 108.4, 108.5, 202.9, 235.8-b, 352(a), 380-i; Personal Property Law, § 413.3

Sec.
333.1 Approval of indices
333.2 Availability of index figures

§ 333.1 Approval of indices

The following are the indices approved by the Superintendent [of Banks], for use by lending institutions which are making variable rate closed-end personal loans pursuant to the provisions of Part 33 of this Title, and for use by banking institutions which establish variable rate open-end accounts pursuant to the provisions of Part 90 of this Title:

(a) the bank prime loan index;

(b) the indices for one-month, three-month or six-month certificates of deposit sold in the secondary market;

(c) the indices for the auction averages from the sale of United States three-month, six-month or one-year Treasury bills;

(d) the indices for three-month, six-month or one-year Treasury bills sold in the secondary market;

(e) the indices for the one-year, two-year, three-year, five-year, seven-year, ten-year, twenty-year or thirty-year constant maturity yield for United States Treasury securities;

(f) the index for the average cost of funds for FSLIC-insured institutions, for the New York district, as published by the Federal Home Loan Bank Board;

(g) the prime rate as published by The Wall Street Journal; and

(h) the indices for one-month, three-month, six-month and one-year London Interbank Offered Rate (LIBOR) as published in The Wall Street Journal.

The indices under subdivisions (a) through (e) of this section are the indices published and announced by the Board of Governors of the Federal Reserve System in such publications as The Federal Reserve Bulletin, H.15, G.13, etc. With respect to these indices, where daily rates and weekly and monthly averages of such daily rates are published, this Part allows use of either the daily rate or the weekly or monthly average rate for such index. This Part also allows use of a rate such as a quarterly or semiannual rate calculated by averaging four or less of the subdivision (a) through (e) rates. In the event of split rate figures for the prime rate as published under subdivision (g) of this section, the lending or banking institution shall use the low figure except where use of the high figure or an average of the two figures is provided by contract and disclosed to the borrower or customer.

§ 333.2 Availability of index figures

The figures used from any of the above indices shall be confirmed for accuracy by the lending or banking institution. The above indices, except for section 333.1(g) of this Part, may only be used if the lending or banking institution readily makes available to borrowers and customers at every branch office (excluding automated teller machines or similar facilities) or by mailing or otherwise upon request, the index figures used in the rate calculation as such figures appear in the source publication.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER A. BANKING ORGANIZATIONS

PART 334. INDICES WHICH MAY BE USED IN CONNECTION WITH VARIABLE RATE JUNIOR MORTGAGE LOANS, VARIABLE RATE INSTALMENT AGREEMENTS AND VARIABLE RATE CLOSED-END RETAIL INSTALMENT CONTRACTS AND OBLIGATIONS

Statutory authority: Banking Law, §§ 14(1), 351(2), 590-a(3); Personal Property Law, §§ 303(4), 404(4), 413(3)

Sec.
334.1 Approval of indices
334.2 Availability of index figures

§ 334.1 Approval of indices

The following indices are approved by the Superintendent [of Banks] for use in connection with variable rate junior mortgage loans made pursuant to Part 80 of this Title by licensees as defined thereunder, in connection with variable rate retail installment credit agreements established pursuant to Part 91 of this Title by retail sellers or creditors as defined thereunder, and in connection with variable rate closed-end retail installment contracts and obligations entered into pursuant to Part 92 of this Title by retail sellers or holders as defined thereunder:

(a) the bank prime loan index;

(b) the indices for one-month, three-month or six-month certificates of deposit sold in the secondary market;

(c) the indices for the auction averages from the sale of United States three-month, six-month or one-year Treasury bills;

(d) the indices for three-month, six-month or one-year Treasury bills sold in the secondary market;

(e) the indices for the one-year, two-year, three-year, seven-year, ten-year, twenty-year or thirty-year constant maturity yield for United States Treasury securities; and

(f) the prime rate as published in The Wall Street Journal.

(g) the indices for one-month, three-month, six-month and one-year London Interbank Offered Rate (LIBOR) as published in the Wall Street Journal.

All the indices listed above, except (f) and (g) are published and announced by the Board of Governors of the Federal Reserve System in such publications as the Federal Reserve Bulletin, H.15, G.13, etc. With respect to any indices listed under subdivisions (a) through (e) of this section which provide daily rates and also weekly and monthly averages of such daily rates, this Part allows use of either the daily rate or the weekly or monthly average rate for such index. In the event of split rate figures for the prime rate as published under subdivision (f) of this section, the licensee, retail seller or creditor, or retail seller or holder shall use the low figure except where use of the high figure or an average of the two figures is provided by contract and disclosed to the borrower or buyer. Except as provided above, averaging of index figures is prohibited.

§ 334.2 Availability of index figures

The figures from any of the above indices shall be confirmed by the licensee, retail seller or creditor, or retail seller or holder which is using the index. The above indices, except for section 334.1(f), may only be used if the licensee, retail seller or creditor, or retail seller or holder makes available to borrowers or buyers at every place of business, or by mailing or otherwise upon request, the index figures used in the rate calculation as such figures appear in the source publication.

TITLE 3. BANKING [DEPARTMENT] DIVISION

CHAPTER III. SUPERINTENDENT'S REGULATIONS

SUBCHAPTER A. BANKING ORGANIZATIONS

PART 340. EXTENSION OF CREDIT ON A NON-DISCRIMINATORY BASIS

Statutory authority: Banking Law, § 9-d; Executive Law, § 296-a (11)

Sec.

340.1 Inquiries concerning marital history, status and number of dependents
340.2 Statement of reasons for rejection
340.3 Attribution of past joint obligations

§ 340.1 Inquiries concerning marital history, status, and number of dependents

For purposes of Executive Law section 296-a (1)(c), it shall not be considered an expression of limitation, specification or discrimination on the basis of sex or marital status if:

(a) a creditor requires an applicant to disclose the name or names by which he or she has previously been known, provided that this information is used solely to determine the applicant's identity and previous credit history;

(b) where application is made for a mortgage and the creditor determines that the signature of the spouse is required in order to pass clear title in the event of a default, a creditor requests information concerning marital status, provided that the information disclosed by such inquiry is used solely for the purpose of perfecting title;

(c) a creditor inquires as to the number of the applicant's dependents, provided that the information disclosed by such inquiry is used solely to determine costs and expenses payable by the applicant.

§ 340.2 Statement of reasons for rejection

For purposes of Executive Law section 296-a(4)(a), a statement of the specific reasons for rejection of an application for credit shall be deemed to be in compliance with this section if it is a clear and meaningful statement of all of the factors which justified rejection.

§ 340.3 Attribution of past joint obligations

For purposes of Executive Law section 296-a(4)(b), a response to a request for a separate credit history, made after July 15, 1974, shall include all obligations, whenever entered into, as

to which the creditor or credit reporting bureau then has information in its files. In creating such a separate history, all obligations on which two parties were jointly liable shall be reported as the obligation of each, irrespective of the actual source of payments.

TITLE 3. BANKING [DEPARTMENT] DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER A. BANKING ORGANIZATIONS
PART 341. RECORDS OF MORTGAGE LOAN APPLICATIONS

Statutory authority: Banking Law, § 6-c

Sec.
341.1 Application and definition
341.2 Responses to inquiries
341.3 Availability of application forms
341.4 Acceptance of application forms
341.5 Records of application forms

§ 341.1 Application and definitions

(a) This Part shall apply to all banking organizations, as defined in section 2.11 of the New York Banking Law, which, in the ordinary course of business, originate loans to be secured by a mortgage or other lien upon residential real property located in the State of New York, including a leasehold estate, and cooperative apartment loans subject to the provisions of section 103.5, 235.8-a or 380.2-a of the New York Banking Law. This Part shall also apply to all inquiries and applications to such banking organizations regarding such loans which are being granted under the current lending policy of such banking organizations.

(b) Application form. An application form shall be a printed or otherwise reproduced standard form. Nothing herein shall prohibit any banking organization from:

(1) using any application form, including any form required or permitted by applicable provisions of Federal or State laws or regulations; or

(2) making informational requests of an applicant in addition to such information as is provided in the application form.

(c) Branch. The term branch shall include a station of a credit union, but shall not include electronic facilities authorized pursuant to section 105-a, 240-a or 396-a of the Banking Law, electronic facilities for which no authorization is necessary or public accommodation offices, authorized pursuant to article IV-A of the Banking Law.

(d) Substantially completed application form means an application form which has been substantially completed and which complies with all applicable provisions of Federal and State laws and regulations; e.g., Federal Reserve Board Regulation B and New York Supervisory Procedure G-107.

§ 341.1 Application and definitions

(a) This Part shall apply to all banking organizations, as defined in section 2.11 of the New York Banking Law, which, in the ordinary course of business, originate loans to be secured by a mortgage or other lien upon residential real property located in the State of New York, including a leasehold estate, and cooperative apartment loans subject to the provisions of section 103.5, 235.8-a or 380.2-a of the New York Banking Law. This Part shall also apply to all inquiries and applications to such banking organizations regarding such loans which are being granted under the current lending policy of such banking organizations.

(b) Application form. An application form shall be a printed or otherwise reproduced standard form. Nothing herein shall prohibit any banking organization from:

(1) using any application form, including any form required or permitted by applicable provisions of Federal or State laws or regulations; or

(2) making informational requests of an applicant in addition to such information as is provided in the application form.

(c) Branch. The term branch shall include a station of a credit union, but shall not include electronic facilities authorized pursuant to section 105-a, 240-a or 396-a of the Banking Law, electronic facilities for which no authorization is necessary or public accommodation offices, authorized pursuant to article IV-A of the Banking Law.

(d) Substantially completed application form means an application form which has been substantially completed and which complies with all applicable provisions of Federal and State laws and regulations; e.g., Federal Reserve Board Regulation B and New York Supervisory Procedure G-107.

§ 341.3 Availability of application forms

Every banking organization which originates loans to which this Part applies shall, at all times, maintain a supply of application forms, sufficient to satisfy the volume of requests for such forms reasonably expected to be received in the ordinary course of business, at its principal office and at each of its branches. An application form shall be provided to each person who requests an application form. Such request may be written or oral. If no application forms are available at the location where the request is made, the banking organization shall make an application form available to the person making the request within five business days after the date on which the request was made.

§ 341.4 Acceptance of application forms

No banking organization shall refuse to accept a substantially completed application form;

provided, however, that a banking organization may require a personal interview with the applicant as part of the application process.

§ 341.5 Records of application forms

(a) Every banking organization shall maintain records of all applications which it has accepted. Such records shall be retained for at least 25 months after the date on which the banking organization notifies an applicant of the action taken on his application. Such records shall include, but need not be limited to:

(1) the application form and any written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request; and

(2) a copy of the notification of action taken; in the case of adverse action, as defined in regulation B of the Board of Governors of the Federal Reserve System, a copy of the statement of specific reasons therefor (if this information was furnished orally, a notation or memorandum thereof); and any written statement by the applicant alleging a violation of the applicant's rights.

(b) Compliance with the record keeping requirements of section 202.12 of regulation B shall be deemed compliance with this section, provided that records maintained pursuant to regulation B shall be fully available for inspection and copying by representatives of the New York State [Banking] Department of Financial Services.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 400

LICENSED CASHERS OF CHECKS

(Statutory authority: Banking Law, §§ 37, 367, 369, 371, 372)

Sec.

400.1 Original issuance of license or change of control of a licensee
400.2 Books, records and microfilm
400.3 Reports
400.4 Depositing of checks, etc.
400.5 Conduct of business
400.6 Reports of arrests, convictions, etc.
400.7 Reports of changes in directors, officers, employees, etc.
400.8 Advertising
400.9 Limited station license
400.10 Mobile unit
400.11 Fees
400.12 Agents of money transmitters
400.13 Reports of misconduct, etc.
400.14 Relocation of licensed location

§ 400.1 **Original issuance of license or change of control of a licensee.**

(a) Application. No person shall engage in the business of cashing checks, drafts or money orders, as principal, broker, agent or otherwise, for a consideration, without first obtaining a license from the [superintendent] Superintendent. This licensing requirement applies whether such activities are conducted for customers who are natural persons or for any business, corporation, partnership, limited liability company or partnership, association, or sole proprietorship, or any other entity. Application for a new license or for a change of control of a licensee shall be made upon forms issued by the [superintendent] Superintendent. These forms may be obtained at [Banking] Department offices at the locations specified in Supervisory Policy G-1. For purposes of this Part, the term person shall include a natural person or a partnership, corporation, association or any other entity. The term control shall mean having the power directly or indirectly to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of a licensee, the ownership of voting stock of any corporation which possesses such power or otherwise and shall be presumed to exist if any person, directly or indirectly, owns, controls, or holds

with power to vote 10 percent or more of the voting stock of any licensee or any person owning, controlling or holding with power to vote 10 percent or more of the voting stock of any licensee.

(b) Application procedure. Completed applications should be delivered to the Licensed Financial Services Division of the Banking [Department] Division of the Department of Financial Services at the New York City office location specified in Supervisory Policy G-1.

An application for a new license for a fixed location or for a mobile unit must be accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. An application by a licensee to operate a limited station must be accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. An application for change of control of a licensee must be accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. Applicants for a new license seeking to conduct business under a trade name must file a certificate in the office of the county clerk as required by General Business Law, section 130. A certificate of the county clerk stating that such a document has been filed must be submitted with an application for a new license.

(c) Information and documents required. Any person seeking to obtain a license to cash checks or to acquire control of a licensed check casher shall submit the following information and documents:

(1) The name and address of the applicant(s). If the applicant is a partnership or corporation, the names and addresses of all partners, officers, directors and substantial stockholders of the applicant, as applicable. For purposes of this Part, substantial stockholder means any stockholder that owns, controls or holds with power to vote 10 percent or more of the voting stock of the applicant.

(2) A background report prepared by an independent investigatory agency acceptable to the [superintendent] Superintendent for every partner, officer, director, substantial stockholder and owner of the applicant, as may be applicable.

(3) For each partner, officer, director, substantial stockholder and owner of the applicant, as may be applicable, detailed biographical information in such form as the [superintendent] Superintendent shall prescribe.

(4) For each partner, officer, director, substantial stockholder and owner of the applicant, as may be applicable, and for all individuals to be employed by the licensee (or, for a change of control application, for all individuals not currently employed by a licensee):

(i) a set of completed fingerprint cards;

(ii) a receipt from a law enforcement agency indicating the place at which the fingerprints were taken;

(iii) a check in the appropriate amount payable to the "Superintendent of [Banks] Financial Services - Fingerprints"; and

(iv) two portrait-style photographs of the individual measuring not more than 2" x 2".

(5) Documentation demonstrating:

(i) that one or more of the partners, officers, directors, substantial stockholders or owners of the applicant, as may be applicable, has management or supervisory experience of at least one year in the check cashing business with a licensee in this State or in the case of changes of control;

(ii) that at least one individual with such experience, or such other equivalent experience deemed adequate by the [superintendent] Superintendent, has been engaged by the applicant for a period of at least one year following the date of commencement of business or the effective date of the change of control, whichever is the case. The [superintendent] Superintendent may increase such one-year experience requirement if it is determined that such increase is in accordance with the purposes of Article 9-A of the Banking Law. If at any time during the one-year period (or any longer period required by the [superintendent] Superintendent) the licensee ceases to be in compliance with the requirements of this subdivision, it shall notify the [superintendent] Superintendent within 10 calendar days of such noncompliance. The name and qualifications of any other individual engaged by the licensee to satisfy the requirements of this subdivision shall be submitted to the [superintendent] Superintendent for approval.

(6) Financial documentation including:

(i) a current financial statement for each applicant;

(ii) a current personal financial statement for each partner, officer, director, stockholder or owner, as may be applicable;

(iii) in the case of an application for a new license, a projected (pro forma) balance sheet and income and expense statement for the first year of operation;

(iv) in the case of an application for a new license, an affirmation that net liquid assets of at least $10,000 shall be available each business day for each licensed location (including mobile units). Net liquid assets, as used in this subparagraph, shall mean funds on hand, funds in banking institutions and marketable securities owned, less any loans and accounts payable in one year or less; and

(v) in the case of an application for a new license, a credit facility letter provided by a banking institution or similar credit facility approved by the [superintendent] Superintendent demonstrating an existing right of access to a line of credit in an amount of $100,000 or more for each licensed location. This line of credit must be available continuously and a licensee must immediately give written notice to the [superintendent]Superintendent if it is not at any time in compliance with this requirement.

(7) A business plan containing such information as shall permit the [superintendent] Superintendent to make a finding that the granting of the license will promote the convenience and advantage of the area in which the business is to be conducted including a determination that there is a community need for a new licensee in the proposed area to be served. Such a plan shall contain at least the following information:

(i) description of primary market area (e.g., identification of blocks and other landmarks including the locations of banking institutions and other licensed check cashers operating in the service area surrounding the proposed location;

(ii) description of projected customer base;

(iii) proposed days and hours of operations;

(iv) types of services proposed to be offered including special services such as fluency in languages which are predominant in the area of licensed location(s);

(v) detailed descriptions of demographics of the area including population density which information should be derived from official government records and other published sources;

(vi) description of any proposed economic development of area; and

(vii) specific marketing targets, if any.

In evaluating an application to permit a change of control of a licensee, where the operations conducted at the licensed location are not to be moved to a new location, the [superintendent] Superintendent shall not be required to make a determination that there is a community need for the licensee in the area to be continued to be served.

(8) In the case of an application for a new license, a copy of the deed to the property on which the check cashing business will be conducted or a copy of the contract to purchase such property or, if the proposed licensed location is leased or to be leased, a copy of the lease or proposed lease or letter from the owner or its agent that the applicant has obtained or will obtain possession of the proposed licensed location. All leases shall be for a term of at least three years. For a change of control application wherein succession to the licensee's business premises does not occur by operation of law, the applicant shall provide evidence to the satisfaction of the [superintendent] Superintendent that the lease(s) for the licensed locations will be assigned or sublet to the applicant or that a new lease(s) will be given the applicant if the applicant is not purchasing the property. All licensed locations except for limited stations and mobile units must have minimum dimensions of at least 480 square feet. The dimensions of the location and a diagram of the proposed layout must be included with the application.

(9) An affidavit signed by the applicant stating that the information given in the application is accurate and complete.

(10) The [superintendent] Superintendent may request such additional information from an applicant deemed necessary to determine whether the applicant satisfies the standard set forth in Section 369 of the Banking Law.

(d) Publication of application. Upon receipt of an application for a license or a change of control of a licensee in a form satisfactory to the [superintendent] Superintendent, notice thereof shall be published in the Weekly Bulletin. Each notice shall contain the name of the applicant and the location of the proposed site. Comments or objections regarding the application should be submitted in writing to the [superintendent] Superintendent within 10 business days of the date of publication.

(e) Determination. The [superintendent] Superintendent shall make a determination on the granting of a license within 90 days after the receipt of all information and documents required by this Part.

(f) If an application for a change of control is approved by the [superintendent] Superintendent, a new license is granted to the applicant in cases in which the name of the licensee is changed. However, although Section 369(1) of the Banking Law indicates that no license shall be granted in such cases, where the licensee is located within three-tenths of a mile of another licensee, the legislative intent, as expressed in Chapter 546 of the Laws of 1994 and set forth in Section 15 of this Part, is consistent with the granting of licenses in all cases in which there is a change of control of an existing licensee. Consequently, an applicant may acquire control of a licensee and change the name of the licensee even if the licensee being acquired is located within three-tenths of a mile of another licensee.

(g) The license of a restricted location authorized pursuant to subdivision 1 of Section 369 of the Banking Law shall not be affected by a change of control, pursuant to Section 370-a of the Banking Law, pertaining solely to such restricted location of such licensee, provided that the licensee continues thereafter to engage at that location in the cashing of checks, drafts or money orders only for payees that are other than natural persons and provided further that such license shall bear a legend stating that such location is restricted to the cashing of checks, drafts or money orders only for payees that are other than natural persons.

§ **400.2 Books, records and microfilm**

Every licensee shall maintain the following records and information. All entries therein shall be made in ink, be typed, or be available through computer printouts. Records maintained under subdivision (a) of this section may, with the prior written approval of the [superintendent] Superintendent, be maintained on microfilm. Approval shall be granted if the [superintendent] Superintendent finds that the licensee has the capability of utilizing microfilm in accordance with subdivision (b) of this section. These records must be preserved for at least three years after the date of final entry, and kept readily available for inspection by representatives of the [Banking] Department.

(a) A "Daily Record of Checks Cashed", in which shall be recorded all cash transactions occurring each day. This record shall include the following information with respect to each check, draft or money order cashed in the face amount of $100 or more, and with respect to any number of checks cashed at any one time drawn by any one maker with the aggregate of the face amount thereof totaling $100 or more:

(1) Date on which the check, draft, or money order is cashed.

(2) Date of the check, draft, or money order.

(3) Number of the check, draft, or money order.

(4) Name and location, or American Bankers Association number, or clearinghouse number, of the banking institution on which the check, draft, or money order is drawn.

(5) Name of the drawer of the check, draft, or money order which is cashed.

(6) Name and home or business address of the individual, partnership, or corporation for which such check, draft, or money order is cashed. Where the licensee maintains an index card or computer record showing current home or business addresses of customers, such address need not be repeated for each transaction on individual checks, drafts, or money orders for $1,500 or less. Complete details, including current address, must be recorded individually for each check (other than a payroll check), draft, or money order exceeding $1,500. On payroll checks, the licensee may accept the address of the employer as the address of the employee cashing the check.

(7) Face amount of the check, draft, or money order.

(8) The fee collected for cashing each such check, draft, or money order.

(9) The amount of each bank deposit, recorded in such form as will clearly identify the particular checks, drafts, money orders, or cash included in each such deposit.

Reporting requirements (1) through (8) (paragraphs (1) - (8) of this subdivision) shall not apply to any United States Government, state, or municipal checks or to checks issued by any banking institutions or insurance companies less than $1,500; that is to say all items more than $1,500 are to be individually listed. However, when 10 or more payroll checks, regardless of amount, of any one employer or 10 or more checks, each of which is less than $1,500, of the United States Government or of any state or municipality are cashed during any one day, it will be sufficient for the licensee to retain a duplicate adding machine listing or other record of each group of such items, showing the individual checks and fees charged as well as the total number of such checks cashed, the name of the drawer, the bank on which they are drawn, the total amount of the checks, and the total fees charged. This information need be shown only once in the daily record of checks cashed for each group of such checks cashed. Except for checks cashed at any one time drawn by any one maker with the aggregate amount thereof totaling $100 or more, the licensee shall retain a duplicate adding machine listing or other record of all checks, drafts, or money orders where the face amount thereof is less than $100, showing the face amounts of individual checks, drafts, or money orders, the total amount thereof, and the total fees charged therefor listed on such tape. This information need be shown only once in the daily record of such checks, drafts, or money orders cashed, covered by a separate adding machine listing or other equivalent record. Additionally, when the licensee receives checks, drafts, or money orders in connection with any other business conducted on the premises, a separate record shall be made of such checks, drafts, or money orders, and the nature of the transaction must also be shown.

(b) Microfilm. Microfilm equipment may be used to record all the checks, drafts and money orders cashed in the business, under the following conditions:

(1) Each roll of film must be processed promptly after it is exposed.

(2) The date items are microfilmed shall be identified by means of a date card inserted into the machine before the items are microfilmed. This shall be done at the beginning of each business day and whenever a new roll of film is put into use. The date indicated shall be the date on which these items were cashed.

(3) The microfilm equipment must simultaneously record together or in sequence the front and back of each check, draft or money order that the licensee cashes. (4) Each check, draft or money order cashed shall be microfilmed together with the deposit ticket indicating the date and total amount of the deposit. The adding machine tape listing all items included in such deposit will be attached to the "Daily Record of Checks Cashed". Items shall be microfilmed in such a manner as to avoid overlapping of the checks, drafts or money orders or otherwise obscuring such items.

(5) The name and home or business address of the individual, partnership or corporation for which the check, draft or money order is cashed shall be indicated on the item before it is microfilmed. Where the licensee maintains an index card or computer record with the current home or business address of customers, such address need not be micro-filmed for each transaction on individual checks, drafts or money orders for $1,500 or less. However, the complete details as required by subdivision (a) of this section including the current address shall be maintained in written or typed form for each check, draft or money order exceeding $1,500. On payroll checks, the licensee may accept the address of the employer as the address of the employee cashing the check.

6) The fee collected for cashing each check, draft or money order must be indicated on the face of the item before it is microfilmed. If payroll checks are cashed and no fee is charged, a notation to this effect (such as N/C) must be indicated on the face of the item.
7) An inventory log of microfilm shall be maintained. This log is to include the following information for every roll of film exposed:
(i) The beginning and ending dates of the period covered.
(ii) The date on which the exposed roll was sent for processing.
(iii) The date on which the developed roll was returned and reviewed.
(iv) The name of the employee reviewing the film.
(8) If the licensee's review of microfilm determines that processed film is not accurate and legible, or if any equipment becomes inoperable, the licensee shall immediately begin to maintain written records as required by Subdivision (a) of this section until such time as the microfilm equipment has been repaired or replaced.
(9) Each roll of microfilm shall be clearly labeled showing the beginning and ending dates of the period covered.
(10) An operative microfilm viewer must be maintained on the premises at all times.
(11) The licensee must: (i) maintain all microfilm equipment so as to ensure continuous proper operation; (ii) verify that all microfilmed records are maintained in an accurate and legible form; and (iii) assure that all personnel working at the location are familiar with these terms and requirements.

If it is found that the licensee is not complying with any of the above requirements, authorization to use microfilm equipment may be revoked in the sole discretion of the [superintendent] Superintendent and, upon notice thereof, the licensee shall thereafter be required to maintain the record of checks, drafts and money orders cashed in written form in conformity with Subdivision (a) of this section.
(c) A "Summary of Business" in which the number of checks, drafts, or money orders cashed, their total face amount, and the aggregate fees received, shall be shown for each business day and totaled for each calendar month. If this information is included in a horizontal form of daily cash reconcilement, such record will be acceptable in lieu of a separate "Summary of Business".
(d) A "Returned Items Record", in which the following information shall be clearly recorded with respect to each check, draft or money order, returned unpaid:
(1) Date on which check, draft, or money order, was reported unpaid.
(2) Issue date of check, draft, or money order.
(3) Date check, draft, or money order was originally cashed by licensee.
(4) Name of drawer of the check, draft, or money order returned unpaid.
(5) Name of payee or last endorser of check, draft, or money order.
(6) Amount of check, draft, or money order returned unpaid.
(7) Name of bank on which check, draft, or money order is drawn.
(8) Reason for which check, draft, or money order was returned unpaid.
(9) Date on which check, draft or money order was redeposited.
(10) Date and manner of payment of check, draft or money order, other

than by redeposit, with complete details of its disposition. Checks, drafts and money orders returned unpaid and immediately charged off or written off must also be listed in the "Returned Items Record". An item will be considered returned unpaid when the licensee's account had been debited for the amount of the item even though such item has not been physically returned to the licensee by the bank, but instead has been redeposited or entered for collection. Such information shall be recorded in the "Returned Items Record" as soon as it becomes known to the licensee.

(11) A current record of the efforts being made to collect unpaid checks, drafts, or money orders which are not redeposited or redeemed;

(e) A "Daily Cash Reconcilement", which shall contain the following information:

(1) Cash on hand at opening of business.

(2) Checks, drafts, or money orders cashed the previous day, and on hand at opening of business.

(3) Cash received during the day and the source of funds in detail.

(4) Total amount of fees received during the day.

(5) The total of items (1) through (4) (paragraphs (1) - (4) of this Subdivision).

(6) The total deposits made during the day.

(7) Other cash paid out during the day showing in detail the nature of the disbursement.

(8) The sum of items (6) and (7) (paragraphs (6) - (7) of this subdivision).

(9) Item (5) (paragraph (5) of this subdivision) less item (8) (paragraph (8) of this subdivision), representing the cash on hand and the total of undeposited checks, drafts, or money orders, cashed during the day.

(10) The total of cash included in item (9) (paragraph (9) of this subdivision).

The "Daily Record of Checks Cashed", "Summary of Business", "Returned Items Record", and "Daily Cash Reconcilement" may be combined into one or more records, provided the required information is kept in such combined record.

(f) A "General Ledger" containing all assets, liabilities, capital, income, and expense accounts. The "General Ledger" shall be posted from the "Daily Record of Checks Cashed", "Summary of Business" and any other records of original entry, at least monthly, and shall be so kept as to facilitate the preparation of an accurate trial balance.

(g) A "Journal", tickets or other record, showing with full explanation, all opening, closing and adjusting entries.

(h) All licensees must maintain separate income and expense statements for each licensed location.

(i) Evidence that a net liquid asset position of not less than $10,000 is being maintained for each licensed location.

(j) A "Daily Record of Money Orders Sold". Check cashers which sell money orders shall keep the following information with respect to money order sales to the same person aggregating $3,000 or more in one day:

(1) the purchaser's name and address;

(2) form of identification used to identify the purchaser;

(3) the method of payment; and

(4) if payment is made by check, the name of the bank and the American

Banking Association number or Clearing House number or the banking institution upon which the check is drawn.

§ **400.3 Reports**

Each licensee shall file an Annual Report within 75 days of the close of the calendar year covering the preceding calendar year for each licensed location on forms provided by the [Banking] Department. The figures entered on these forms shall be derived from financial statements of the licensee that have been audited by an independent certified public accountant (CPA) and on which the CPA has expressed an opinion. Only one certified financial statement shall be prepared for all locations licensed under the same legal entity. The Annual Report shall contain such information as required by the [Superintendent] Superintendent. In addition to the above report, the [superintendent] Superintendent may require, under oath and in the form prescribed by the [superintendent] Superintendent, such additional regular or special reports as the [superintendent] Superintendent may deem necessary to the proper supervision of any licensee under Article 9-A of the Banking Law.

§ 400.4 **Depositing of checks, etc.**

(a)(1) Except as hereinafter stated all checks, drafts and money orders must be deposited in the licensee's bank account in a branch or principal office of a bank, savings bank, savings and loan association, trust company, national bank, federal savings bank, or federal savings and loan association or any other duly chartered depository institution that is insured by the Federal Deposit Insurance Corporation, regardless of whether the branch and/or principal office of the foregoing banking institution is located within or without this State (collectively, "banking institution"), not later than the first business day following the day on which they were cashed. Such items must be deposited during the regular business hours of such banking institution so as to enable it to credit the deposits to the licensee's account on that business day.

(2) Any account maintained by a licensee for the deposit of checks, drafts or money orders in a banking institution shall be subject to a written account agreement between the licensee and the banking institution that expressly provides for the personal and in rem jurisdiction over the parties and the account, respectively, of state and federal courts located in the State of New York and the agreement shall be governed by the laws of the State of New York, except that this requirement shall not apply:

(a) with respect to an account maintained in New York or in a State of New York-chartered bank prior to November 1, 2005, unless or until such existing account agreement is amended subsequent to November 1, 2005; or

(b) if this requirement is waived in the [superintendent's] Superintendent's discretion. Every licensee or applicant for a license shall provide to the [superintendent] Superintendent a copy of any such account agreement within 15 days of establishing any such account or any amendment thereto relating to the items required by this subsection. Every licensee shall maintain a copy of such account agreement as part of its records available for examination by the [superintendent] Superintendent.

(3) Prior to depositing any checks, drafts or money orders in an account at a banking institution, the licensee shall cause such banking institution to give the [superintendent] Superintendent written authorization to conduct any such examination of all books, records, documents and materials, including those in electronic form, as they relate to such account and any checks, drafts, or money orders placed on deposit in such account, as the [superintendent] Superintendent in his/her discretion deems necessary, except that his written authorization requirement shall not apply:

(a) with respect to an account maintained in New York or in a State of New York-chartered bank prior to November 1, 2005, unless or until such existing account agreement is amended subsequent to November 1, 2005; or

(b) if this requirement is waived in the [superintendent's]Superintendent's discretion. The licensee shall pay the cost of any such examination.

(4) When the number of payroll checks cashed at a limited station amount to 50 or more, the licensee may present those checks to the drawee bank or the maker of the checks and receive in exchange a single draft, provided full details of the transaction are recorded in a manner satisfactory to the [superintendent] Superintendent.

(b) All checks, drafts and money orders, cashed on any one day and deposited on the same day or the next business day must be deposited under a separate deposit total and not commingled with any other day's business.

(c) This section shall be deemed to be violated if a licensee, instead of depositing all checks, drafts and money orders as required herein, cashes all or any of them at another check casher, exchanges all or any of them for another check or checks or negotiates all or any of them in any manner or for any purpose other than that provided in this section.

(d) The checks, drafts, money orders or cash or any other business in which the licensee is engaged must not be commingled with other funds in the licensee's bank account or with the cash or checks on hand. Separate records must be kept for a check cashing business conducted on the same premises where another business is also being operated. In such case the licensee should apportion to the check cashing business its share of expense. Reasonable estimates may be used.

§ **400.5 Conduct of business**

(a) Every licensee shall:

(1) Post and display at all times in a conspicuous place on the premises the license. Every licensee that cashes one or more checks, drafts or money orders for any payees that are natural persons must post the schedule of rates to be charged with respect to such transactions involving payees that are natural persons. The schedule shall be made of durable material, be no less than 30 inches wide and 36 inches high with letters at least 3/4 inch in size and indicate the fee applicable to the full amount of the check to be cashed. The schedule shall indicate the fee that corresponds to the amount of the check. The amount of the check shall be set forth on the schedule in increments of $25.00 ranging from $25.00 to $2,000. The schedule shall also indicate the percentage charge imposed on all checks and the minimum charge of $1.00 per check. The schedule shall be in English and in Spanish and posted in the customer's area.

(2) Pay to every customer tendering any check, draft or money order to be cashed, the entire face amount of such instrument in cash less any charges permitted by this Part, on the same date upon which such instrument is presented. In no event shall the licensee make a partial payment on account, on any such instrument.

(3) Indicate on every check, draft or money order cashed at the time of cashing, the date on which such item was cashed.

(4) Maintain continuously for each licensed premises net liquid assets of at least $10,000. In order to determine whether the said sum is continuously available for each licensed premises, each licensee shall compute and include the following: Add the amount of cash in bank, cash on hand, checks on hand not previously dishonored, and marketable securities owned, and deduct the amount of any loans due in one year or less, including loans payable on demand, and all accounts payable.

(5) Be held responsible for any violation of the Banking Law or regulations promulgated thereunder by any employee or by anyone directly or indirectly connected with the licensee's check cashing business.

(6) Reconcile its bank statements at least monthly.

(7) Keep a true copy of each and every report which it shall be called upon to furnish to any agency or department of the U.S. government, this State or any municipality in this State. Such copies, together with any work sheets used to assemble the figures and/or facts shown in such report, are to be retained as part of the records of each licensee for a period of three years.

(b) No licensee shall:

(1) Cash any check, draft or money order, nor act as intermediary, agent or in any way assist in the negotiation of any such instrument, at any place other than the premises licensed.

(2) Act as an agent for the collection of checks, drafts, money orders or other negotiable paper.

(3) Cash any check or draft of any drawer if the licensee has any reason to believe that such a check or draft is likely to be dishonored.

(4) Cash any check, draft or money order if the licensee has reason to believe or know, that the maker, the payee or any of the endorsers of such instruments, or the persons presenting it for cashing, are known by any name other than that appearing on such instruments, without recording on its books and records the true name or names, as well as the assumed name or names of such person or persons, together with the true addresses.

(5) Cash any check on which the date line is blank.

(6) Alter or change the date of any check presented for cashing.

(7) Charge, take or receive any money, goods or things in action, for or in connection with the cashing of a check, draft or money order in excess of the fees and charges prescribed in section 400.12 of this Part.

(c) Each check casher shall provide receipts to customers for every check cashed. The receipt shall indicate the face amount of each check which has been cashed, followed by the fee charged for cashing the check, the face amount of each money order sold to the customer and the cost thereof, amounts taken in payment of utility bills and the fees

charged for such service less deductions for any other services provided and the balance thereof which is paid to the customer. The receipt shall be dated and have the name and address of the check casher on it.

(d) Every licensee shall display on its premises a sign made of either plastic or metal which shall be no less than 18 inches wide and 12 inches high with letters one inch in size indicating that:

(1) the check casher is licensed by the [Banking] Department; and

(2) that inquiries may be made by calling the [Banking] Department's toll-free number or if the customer has a complaint against the check casher by writing to the New York State [Banking] Department of Financial Services, c/o Consumer Services Division, in both cases as set forth in section 1.1 of Supervisory Policy G 1. This sign shall be located at or near the teller's window and be in English and Spanish.

§ 400.6 **Reports of arrests, convictions, etc.**

A written report shall be made to the [superintendent] Superintendent of any arrest, indictment or conviction (including any plea bargaining agreement) of any stockholder, director, officer, owner, partner, or employee connected with the business of the licensee, for the violation of any law within 10 days after such arrest, indictment or conviction becomes known to the licensee.

§400.7 **Reports of changes in directors, officers, employees, etc.**

The licensee shall inform the [Banking] Department in writing, within 10 days of the occurrence, of the name of any director, stockholder, officer, owner, partner, employee or other individual connected with the business of the licensee who terminates or alters his or her status with the licensee, and the name of any individual who becomes connected with the business of the licensee as director, stockholder, officer, employee or in any other capacity. Any change in partnership, or in the ownership or in the officers, directors or stockholders of a corporation, or in the persons financially interested in the business of the licensee, will not become effective until approved by the [superintendent] Superintendent. If the [superintendent] Superintendent finds that an individual who becomes connected with the business of a licensee does not meet the standards set forth in Section 369 of the Banking Law, the licensee, upon receiving written notice of such findings, shall immediately take steps to ensure that such individual ceases to have any connection with the licensee. The [superintendent] Superintendent may request any information and documentation from the licensee in determining whether to approve any such individuals. Nothing in this section shall be deemed to apply to any person who becomes connected with the business of the licensee and who is required to submit an application under section 400.1 of this Part to acquire control of the licensee.

§ 400.8 **Advertising**

If a licensee states or indicates in advertising of any kind or nature, or by a sign of any kind, that it is licensed by or subject to the supervision of the [superintendent] Superintendent it may do so only by use of the following phrase: "Licensed by the Superintendent of [Banks] Financial Services, pursuant to Article 9-A of the Banking Law."

§ **400.9 Limited station license**

(a) For the purposes of this section, a limited station is hereby defined as a place where a licensed casher of checks may maintain and make available to the particular group specified in the application, and to that group only, the facilities for cashing checks, drafts or money orders on the designated premises, such facilities being made available for no more than two days of each week (such days to be designated in the application). Neither the location, the group, nor the days designated in the application may be changed without the written approval of the [superintendent] Superintendent.

(b) The holder of a license to maintain a limited station shall observe the rules and regulations issued by the [superintendent] Superintendent which are applicable to all licensed cashers of checks, except that if the information called for and required to be kept in books or records as outlined in section 400.3 of this Part is kept as part of the records of the principal office of the licensee then separate records at the limited station shall not be required.

§ **400.10 Mobile unit**

In addition to the information and procedure required under section 400.1 of this Part:

(a) Every applicant for a mobile unit license must specify in the application:

(1) The one or more designated places in a general area described and bounded by streets and avenues at which the facilities of the mobile unit are to be made available to the public for the cashing of checks, drafts or money orders.

(2) The names and addresses of the principal establishments whose employees are to be primarily served by the operation of the mobile unit in such general area, together with a statement outlining the convenience, advantage and necessity therefor, particularly with regard to the presence of existing banking institutions and/or other check cashing facilities available in the general area.

(3) The particular streets within the general area on which it is expected that the mobile unit will actually transact its business.

(4) The days of the week (not more than one day or one period of 24 consecutive hours for each designated place) that the unit will be in operation within such general area.

(5) The place where the books, records, and all information pertaining to its business are to be kept and be available to representatives of the [Banking] Department. Such place shall not be changed without first advising the [superintendent in writing of the new place where such records are to be kept.

(b) A licensee of a mobile unit may only transact business at the particular locations specified in its licenses.

(c) Neither the places nor the days designated in the application may be changed without the written approval of the [superintendent] Superintendent as provided for in Banking Law, section 370(3).

(d) The holder of a license to operate a mobile unit must comply with the Vehicle and Traffic Law and the ordinances and traffic regulations issued by municipal and other authorities. In the event that any municipality shall require a special permit or license for the purpose of operating a mobile unit, the obtaining of such special permit or license by the applicant shall be a condition precedent to the issuance of a license by the [superintendent] Superintendent.

(e) A licensee of a mobile unit shall observe the rules and regulations issued by the [superintendent] Superintendent which are applicable to all licensed cashers of checks.

§ 400.11 **Fees**

(a) Except with respect to the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons, a licensee shall be permitted to charge or collect a fee for cashing a check, draft or money order not to exceed

(1) 1.5 percentum of the amount of the check, draft or money order; provided, however, effective January 1, 2006, such percentum of the amount of the check, draft or money order shall be increased by an additional 0.03 percentum in addition to any increase that shall have been heretofore or hereafter made pursuant to subdivision (b) of this section and such additional 0.03 percentum shall not itself be subject to any increase pursuant to subdivision (b) of this section; or

(2) $1, whichever is greater.

(b) Effective January 1, 2005, and annually thereafter, the maximum percentum fee specified in subdivision (a) of this section, shall be increased by a percentum amount, based upon an increase in the annual consumer price index for the New York-Northern N.J.-Long Island, NY-NJ- CT-PA area for all urban consumers (annual CPI-U), as reported by the Bureau of Labor Statistics of the U.S. Department of Labor for the calendar year preceding the year in which such increase is made compared to such annual CPI-U for the year prior to such preceding year. The maximum percentum fee that may be charged or collected for cashing a check, draft or money order pursuant to this section in effect at such time shall be multiplied by such computed percentum amount and the result added to such maximum percentum fee. The resulting sum shall be the revised maximum percentum fee, which shall be posted upon the internet site of the [Banking] Department of Financial Services (www.[banking.state.ny.us]dfs.ny.gov)by the [superintendent] Superintendent not later than forty-five days following the public release of such annual index by the U.S. Department of Labor. Such revised maximum percentum fee shall be calculated and posted to the nearest one-hundredth of a percentum. Such revised maximum percentum fee shall be effective not later than forty-five days after the [superintendent] Superintendent shall have notified the Majority Leader of the Senate, the Speaker of the Assembly, and the Chairperson of both the Senate and Assembly Committees on Banks of his/her intention to change the maximum percentum fee pursuant to the provisions of section 372.3 of the Banking Law and shall continue in effect until revised and increased in the next

succeeding year based upon an increase in such annual index. If such annual CPI-U does not increase in any one year, the maximum percentum fee in effect during the year in which the index does not increase shall remain unchanged in the next succeeding year. Nothing herein shall be deemed to prohibit the [superintendent] Superintendent from setting, by regulation, a different maximum percentum fee at any time where the [superintendent] Superintendent shall find that such a fee is necessary and appropriate to protect the public interest and to promote the stability of the check cashing industry for the purpose of meeting the needs of the communities that are served by check cashers. No maximum fee shall apply to the charging of fees by licensees for the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons.

§ 400.12 **Agents of money transmitters**

(a) Definitions. As used in this Section:

(1) the term money transmission activities shall mean any of those activities for which a license is required under Article 13 of the Banking Law, including but not limited to the sale of money orders and the transfer of funds.

(2) the term transfer of funds shall mean the transmission of funds from one location to another by electronic devices or otherwise, including but not limited to the acceptance of funds for utility bill payments (but not including the sale of money orders).

(3) The term licensed money transmitter shall mean all entities licensed under Article 13-B of the Banking Law and all entities exempt from such licensing.

(b) A licensee shall not engage in any money transmission activities as an agent for a licensed money transmitter without first obtaining the written approval of the [superintendent] Superintendent for the contemplated money transmission activities.

(c) To seek such approval, a written application containing the following information shall be submitted to the [superintendent] Superintendent:

(1) the name and address of the licensed money transmitter;

(2) the locations at which the licensee will engage in money trans mission activities as agent;

(3) the activities to be engaged in as agent to the licensed money transmitter; and

(4) a brief description of the procedures and methods by which the money transmission activities will be carried out.

(d) The following documents shall also be submitted to the [superintendent]Superintendent together with the written application:

(1) a copy of the agency agreement with the licensed money transmitter, which agreement must specifically state that the licensee is acting as agent for the money transmitter for the money transmission activity or activities; and

(2) copies of any documentation which the licensee intends to furnish to the public in connection with the money transmission activities (e.g., forms, receipts).

(e) The superintendent may request further information and documentation from the licensee in determining whether to approve the agency activities of the licensee.

(f) The [superintendent] Superintendent may prohibit a licensee from acting as agent for a licensed money transmitter if it is determined that:

(1) the licensee has not or is not conducting its business in accordance with applicable laws and regulations;

(2) the [Banking] Department's regulatory experience with the licensee has not been satisfactory; or

(3) it would not be in the public interest to authorize the licensee to act as agent for a licensed money transmitter.

(g) The [superintendent] Superintendent may prohibit a licensee from acting as agent for a licensed money transmitter if it is determined that the money transmitter does not have adequate capital or sufficient expertise toutilize licensed check cashers as agents for the intended activity.

(h) All licensees acting under the authority of this Part shall clearly display on their premises, in full public view, a sign for each money transmission activity, which shall be no less than 18 inches wide and 12inches high, prominently indicating the following:

(1) the name and address of the money transmitter and the type of money transmission activity for which the licensee is acting as agent;

(2) except in the case of acceptance of utility bill payments, a toll-free number established by the money transmitter which may be called to answer complaints or questions;

(3) that the check casher is licensed and regulated by the New York State [Banking] Department of Financial Services located at the New York City office location specified in Supervisory Policy G-1; and

(4) in the case of the transfer of funds, those persons receiving funds may not be charged any fee by the licensee and that the licensee is acting as agent of the licensed money transmitter in accepting such funds. If the licensee is transferring funds to utility companies for payment of utility bills, it must be indicated that utility payments are not considered paid until received by the utility company.

(i) Except in the case of acceptance of utility bill payments, the form utilized by the licensee for persons requesting a transfer of funds shall contain the information required by paragraphs (h)(1), (2) and (4) of this section and the following additional information:

(1) a statement of the liability of the money transmitter for delayeddelivery or nondelivery;

(2) a statement of the refund policy of the licensed money transmitter;

(3) the dollar amount of the transmission; and

(4) the fee charged to persons who transfer funds.

A copy of this form shall be given to every person who utilizes a licensee to transfer funds, together with a receipt for the amount of money transmitted. The form and receipt may be contained in a single document.

(j) Except in the case of utility bill payments, the licensee shall receive all agency fees from the licensed money transmitter for the transfer of funds subsequent to the remittance of the monies to the licensed money transmitter.

(k) A licensee's acceptance of utility bill payments as agent for a licensed money transmitter shall be in accordance with the following:

(1) Funds received by the licensee for payment of utility bills must be remitted to the utility company by means of money orders issued by a licensed money transmitter. Such funds must be remitted using such money orders on a current basis no less than twice a week.

(2) The licensee shall insure against the loss to the licensed money transmitter and the customer of any utility bill payment accepted by securing a surety bond payable to the licensed money transmitter, in the amount of at least $100,000 for each of the licensee's locations, covering all utility bill payments accepted by the licensee. Evidence of such surety bond, satisfactory to the [superintendent] Superintendent, shall be given to the [superintendent] Superintendent priorto the acceptance of the utility bill payments by a licensee.

(3) At the time any licensee accepts a utility bill payment for remittance, the licensee shall furnish to the customer a separate receipt for each utility bill payment showing the date, the amount accepted by the licensee, and the public utility company to which the payment is to be remitted. A stamped customer's copy of the utility bill shall be deemed a separate receipt for purposes of this section, if the stamp identifies the licensee accepting the utility bill payment and shows the amount accepted for remittance and the date of receipt.

(1) The books and records of the licensee which relate to its activities as an agent for a licensed money transmitter shall be kept separate and distinct from those relating to any other business of thelicensee and shall be readily available for examination by the [superintendent] Superintendent.

(m) Any licensee which terminates its agency relationship with a licensed money transmitter for one or more money transmission activities shall notify the [Banking] Department within 30 days of such termination. If a licensee seeks to act as agent for another licensed money transmitter, it shall follow the procedures set forth in subdivisions (c) and (d) of this section.

(n) The [superintendent] Superintendent may, upon 30 days' written notice to the licensee, suspend or revoke the authorization for any or all of its money transmission activities if it shall be determined that any of the grounds for denying an application specified in subdivision (f) of this section exist.

§ 400.13 **Reports of misconduct, etc.**

Every licensee shall submit a report to the [superintendent] Superintendent Immediately upon the discovery of the taking, or attempted taking, of money or property from such licensee. Such reports shall be submitted as prescribed by Part 300 of the [superintendent's] Superintendent Regulations.

§ 400.14 **Relocation of licensed location**

Background. Chapter 546 of the Laws of 1994 altered the licensing criteria applicable to check cashers by substantially amending section 369 of the Banking Law to require, among other things, that the superintendent determine whether there is a community need for a new licensee in the proposed area to be served and to prohibit entirely the granting of a license at a location which is less than three-tenths of a mile from an existing licensee. In so acting, the Legislature adopted a specific statutory finding of legislative intent, to wit, "The legislature hereby finds and declares that check cashers provide important and vital services to New York citizens; that the business of check cashers shall be supervised and regulated through the

[Banking] Department in such a manner as to maintain consumer confidence in such business and protect the public interest; that the licensing of check cashers shall be determined in accordance with the needs of the communities they are to serve; and that it is in the public interest to promote the stability of the check cashing business for the purpose of meeting the needs of the communities that are served by check cashers." However, the legislation left unamended Banking Law, section 370 which permits a licensee to apply to the [superintendent] Superintendent for leave to change its place of business to any other location and which does not make explicit the standards to be applied by the [superintendent] Superintendent in granting permission to relocate. A licensee must obtain a new license to conduct business at another location In order to promote and maintain the stability of the check cashing business while accommodating the reasonable needs of current licensees to relocate, the following standards shall be applied by the superintendent in determining whether to approve applications for relocation to any site which is within three-tenths of a mile of another licensed location:

(a) No relocation shall be permitted to a site within three-tenths of a mile of another existing licensee location from a location greater than three-tenths of a mile from such existing licensee location, unless such other existing licensee engages in the cashing of checks, drafts or money orders only for payees of such checks, drafts or money orders that are other than natural persons at a restricted location authorized pursuant to subdivision 1 of section 369 of the Banking Law or at any other licensed location where at the licensee engages solely in the cashing of checks, drafts or money orders only for payees that are other than natural persons.

(b) A relocation may be approved, from a site within three-tenths of a mile of another licensee to another site within three-tenths of a mile of such other licensee so long as such new site is farther from such existing licensee than the site from which permission to relocate is sought. If, however, a licensee seeks to relocate from a site within three-tenths of a mile of another licensee and the new site is closer to an existing licensee, the [superintendent] Superintendent shall approve the relocation only under the following conditions:

(1) the relocation is consistent with the legislative intent as expressed in chapter 546 of the Laws of 1994;

(2) the licensee seeking to relocate must demonstrate that extraordinary circumstances are forcing it to relocate (e.g., fire, condemnation). The [superintendent] Superintendent, in his or her sole discretion, shall determine the existence of "extraordinary circumstances"; and

(3) the licensee seeking to relocate has no reasonable alternative but to move closer to another licensee.

If the licensee seeks to relocate from a site within three-tenths of a mile of another licensee to another site within three-tenths of a mile of another licensee and the new site is closer to an existing licensee it may relocate to such site without complying with the conditions set forth in paragraphs (1), (2) and (3) of this subdivision if the licensee which is impacted by the relocation gives its written consent to such relocation. A copy of this consent shall be submitted to the [superintendent] Superintendent by the licensee seeking to relocate together with its application. The [superintendent] Superintendent shall approve or disapprove such application in accordance with the provisions of section 370(3) of the Banking Law. In the case in which a licensee applies to relocate to a site which is not within

three-tenths of a mile from another licensed location, in the absence of special factors, public convenience and advantage shall be deemed to be promoted without demonstration of community need therefor where the new location is no greater than three-tenths of a mile from the site from which permission to relocate is sought. For purposes of this subdivision, the term "special factors" shall include such interceding geographic or topographic features as may inhibit reasonable foot traffic between such locations (e.g., major roads or highways, bridges, mountains or the lack of reasonably direct street access).

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 401

LICENSED LENDERS

(Statutory authority: Banking Law, §§ 359, 360)

Sec.
401.1 Application procedure; licenses
401.2 Application for acquisition of control of licensed lender by purchase of stock, merger, consolidation, purchase of assets, or otherwise
401.3 Changes in directors or officers
401.4 Change of location
401.5 Loans, books and records
401.6 Place of business, conduct of business
401.7 Purchase and collection of loans made in other jurisdictions
401.8 Advertising
401.9 Insurance
401.10 Computation of interest or charges
401.11 Authorization for the conduct of other business
401.12 Filing of rate charts and loan forms

§ 401.1 Application **procedure; licenses**

(a) Application. Application for a license to engage in the business of making loans in the principal amount of $25,000 or less for any loan to an individual for personal, family, household, or investment purposes and in a principal amount of $50,000 or less for business and commercial loans may be obtained from the [Banking] Department of Financial Services, at the address set forth in section 1.1 of Supervisory Policy G 1. If an application is requested in writing, the address should indicate the following: Attn: Licensed Financial Services Division.

(b) Financial responsibility. Applicants for a license shall demonstrate and maintain:

(1) Liquid assets of at least $50,000 available for the operation of the business at the location specified in the application.

(2) Net worth of at least $100,000.

(3) A confirmed line of credit of at least $100,000 issued by any banking institution incorporated under the laws of the United States or any state or any insurance company.

(c) Background information. The applicant shall provide a report from an independent investigatory firm detailing the personal and financial background of the applicant. This report

shall contain the information necessary for the [superintendent] Superintendent to determine whether the applicant has the financial responsibility, experience, character and general fitness required by article 9 of the Banking Law.

(d) Business background. Applicants for a license shall demonstrate to the [superintendent's] Superintendent satisfaction that it has five years verifiable experience in the business of making consumer loans or similar lending and credit evaluation experience or that it has engaged or will engage in its employ one or more persons having such experience. The [superintendent] Superintendent may permit other relevant educational or business experience to be credited towards satisfaction of the lending and credit evaluation experience requirement.

§ 401.**2 Application for acquisition of control of licensed lender by purchase of stock, merger, consolidation, purchase of assets or otherwise**

(a) Application. An application for acquisition of control of a licensed lender may be obtained from the [Banking] Department of Financial Services, at the address set forth in section 1.1 of Supervisory Policy G 1. If an application is requested in writing, the address should indicate the following: Attn: Licensed Financial Services Division.

(b) Financial responsibility. An applicant desiring to acquire control of a licensee shall have and maintain liquid assets of at least $50,000 for the operation of each place of business of the licensee. In addition, the applicant shall have and maintain net worth of at least $100,000 and a confirmed line of credit of at least $100,000 issued by any banking institution incorporated under the laws of the United States or any state or any insurance company.

(c) Background information. Unless the applicant is already licensed under article 9 of the Banking Law, the applicant shall provide a report from an independent investigatory firm detailing the personal and financial background of the applicant. This report shall contain the information necessary for the [superintendent] Superintendent to determine whether the applicant has the financial responsibility, experience, character and general fitness required by article 9 of the Banking Law.

(d) Business background. Unless the applicant is already licensed under article 9 of the Banking Law, the applicant shall demonstrate to the [superintendent's] Superintendent's satisfaction that it has five years verifiable experience in the business of making consumer loans or similar lending and credit evaluation experience or that it has engaged or will engage in its employ one or more persons having such experience. The [superintendent]Superintendent may permit other relevant educational or business experience to be credited towards satisfaction of the lending and credit evaluation experience requirement.

§ 401.3 **Changes in directors or officers**

Within 30 days after a change of any of the executive officers or directors a licensee shall submit to the [superintendent] Superintendent, in writing:

(a)the name, address and occupation of each new officer or director and;

(b) provide such other information as may be required by the provisions of article 9 of the Banking Law;

(c) for purposes of this section, the term executive officer means every officer who participates or has authority to participate, otherwise than in the capacity of a director, in major policymaking functions, regardless of whether he or she has an official title or whether such title contains any designation of assistant and regardless of whether he or she is serving without salary or other compensation. The chairman of the board of directors, the president, every vice-president, the secretary, and the treasurer are assumed to be executive officers, unless, by resolution of the board of directors or by the bylaws of the corporation, any such officer is excluded from participation in major policymaking functions, otherwise than in the capacity of a director, and he or she does not actually participate therein.

§ **401.4 Change of location**

A licensee may, subject to the [superintendent's]Superintendent finding that there is no reasonable objection, change its location by giving written notice to the [superintendent] Superintendent at least 30 days prior to such change. The written notice shall set forth the current address, the complete address of the proposed new location, the effective date of the relocation, and shall be accompanied by a postal verification of the address of the new location, payment of the fee specified in section 1.2 of Supervisory Policy G 1 and the original license certificate.

§ 401.5 **Loans, books and records**

(a) When payment is received on any loan, entry shall be made in the licensee's record of the borrower's account as follows:

(1) on a simple interest loan-the date of payment, the amount applied to interest, the amount credited to principal and the unpaid principal balance; and

(2) on a precomputed interest loan-the date of payment, any amount applied to default or deferment charges, the amount applied to the total unpaid balance and the total unpaid balance.

(b) The application for any loan and all original papers relating to it shall be filed so as to be readily available for inspection at any time, except those papers returned to the borrower on paid-up accounts. All such papers and instruments shall bear the number of the loan to which they relate.

(c) Every licensee shall keep, for at least two years, a record which will readily disclose the number, date and amount financed of all loans granted to each borrower, and the unpaid principal balance of each such loan which is paid by a new loan or the date of final payment when it is paid in any other manner. All such information with respect to each loan shall be recorded on one line and may be incorporated with existing records. An example showing the information desired follows:

John Jones
15 Court Street, Troy, NY

Number	Date	Amount	Unpaid principal paid by new loan

		Financed	or date paid
17496	6-19-60	$400	$250.00
19102	12-5-60	800	629.97
19901	6-6-61	600	9-2-61

(d) In lieu of the loan history record prescribed above, for each open-end loan agreement, the licensee shall keep, for at least two years, one record from which may be readily determined the name, address and account number of the borrower, the date upon which the credit was initially established, the amount of such initial credit, each date upon which an additional credit was made available, the amount of such additional credit, and the amount of the unpaid balance as of each date upon which an additional credit was made available.

(e) With respect to any loan, whether charged off or not, for which a licensee maintains records in accord with section 349 of the Banking Law, every licensee shall record all information relating to the borrower's account including:

(1) the date upon which an attorney has been asked to commence legal action;
(2) the date upon which any legal action (including steps to collect by means of garnishees or attachments of salary) or summary action is taken for or against the licensee, and its nature;
(3) the date upon which judgment is obtained with respect to any signer or endorser;
(4) the date and terms of any settlement agreed upon as a result of any legal or summary action taken for or against the lender;
(5) the nature of any collection expense or expense incurred by the lender in connection with litigation, charged to or paid by any obligor; and
(6) the date upon which the lender's attorney discontinues efforts to collect by legal action.

All information required to be maintained pursuant to this subdivision shall be readily accessible for review and examination by the superintendent.

(f) Whenever a precomputed interest loan is prepaid in full in cash or by refinancing or otherwise, before the final installment date, the licensee's record of the borrower's account shall disclose the amount owing on the loan at the time of such prepayment (including default or deferment charges if any), and any refund paid or credited to the account by reason of such prepayment and the licensee shall deliver to the borrower at the time of such prepayment a record disclosing the information required by this subdivision.

§ 401.6 **Place of business; conduct of business**

(a) (1) The place of business designated in the license shall be open each business day during normal business hours except where otherwise authorized by the [superintendent]Superintendent. If the [superintendent] Superintendent authorizes a licensed

location to be open for business only during certain days or hours, the licensee shall post on the window the days and hours such office is open.

(2) A closed-end loan agreement shall provide for payments of principal, or principal and interest combined, to be made not less frequently than one each month beginning not more than one month and 15 days after the date the loan is made.

(b) (1) A licensee may enter into an open-end loan agreement with a borrower which shall provide for a credit in a principal amount not exceeding the maximum amount permitted by Banking Law, section 340 against which one or more advances to or for the account of the borrower may be made, either at the time the credit is established or thereafter from time to time, or both, by means of honoring or causing to be honored one or more written orders or requests of the borrower, or one or more checks or drafts negotiated by the borrower. Interest shall be computed on the unpaid aggregate principal amount of advances determined by adding the amounts unpaid for each day of the monthly billing cycle and dividing the sum by the number of days in the billing cycle. The term billing cycle shall have the same meaning as set forth in section 226.2(a) (4) of Regulation Z of the Federal Reserve Board.

(2) An open-end loan agreement shall provide for payments at intervals at least monthly for such term as agreed upon by the licensee and the borrower and may provide that the payments to be made after an advance shall be larger than those made before the advance.

(3) At least 14 days before the date each payment pursuant to an open-end loan agreement is due, the licensee shall deliver to the borrower, or mail to the borrower at the mailing address last known to the licensee, a statement of account covering the period for which payment will be due. Such statement shall contain all disclosures required by the Act of Congress entitled Truth-in-Lending Act (15 USC section 1501 et seq.) and the regulations and rules thereunder.

(4) Nothing in this Part is intended to authorize financings of the type permitted pursuant to the New York Retail Installment Sales Act.

(c) When a cash payment is made pursuant to any closed-end loan agreement, the lender shall give to the person making it, at the time the payment is made, a receipt which specifies the amount applied to the outstanding loan balance and any other charges. In the case of an open- end loan agreement, the receipt shall specify the amount applied as finance charge, the amount applied to insurance premiums, if any, the amount applied to the previous balance and the amount of the new balance. If the licensee provides the borrower with a periodic billing statement which contains the information required by this paragraph, a receipt may be issued which specifies only the amount of the cash payment.

(d) (1) Every loan agreement which is sold or otherwise transferred by a licensee shall contain printed in a size equal to at least 10-point bold type the statement:

If this agreement is sold or otherwise transferred, the borrower's rights under the law or under this agreement are in no way altered or impaired.

(2) A licensee is prohibited from selling or otherwise transferring an open-end loan agreement which it originates unless at least 15 days before such sale or transfer takes place the licensee which originated the open-end loan agreement mails or delivers to the borrower at

the mailing address last known to the licensee notice of such sale or transfer. Such notice shall contain a statement to the effect that the borrower may terminate the open-end loan agreement at any time and repay the outstanding unpaid balance in accordance with the terms of the loan agreement.

(3) Every licensee shall promptly notify the superintendent in writing of the date any licensed office has discontinued business and shall surrender the license for such office within fifteen days of such discontinuance.

(4) If the 10th day of a default in the payment of any scheduled installment of a precomputed interest loan falls on a Sunday, a legal holiday, or a Saturday (if the office of the licensee at which payment is to be made is closed on Saturday), the borrower shall have all of the next business day in which to pay said installment before a default charge may be imposed.

(5) Except upon written request of the borrower, no licensee shall impose a deferment charge on a precomputed interest loan if the amount tendered is sufficient to pay the full amount in default plus any default charge owing thereon.

§ 401.7 **Purchase and collection of loans made in other jurisdictions**

Each licensee is authorized to purchase and collect, within any office, room or place of business wherein said licensee conducts its business, direct loans made by any of its branches or other lenders if:

(a) such loans were legally made in a foreign country at a rate of interest not in excess of that permitted by article 9 of the Banking Law; or

(b) such loans were legally made in a state which then had in effect a regulatory small loan law similar in principle to article 9 of the Banking Law; and

(c) a record of such purchases and collections is kept separate and apart from the books and files relating to the activities of the licensed lender in making loans under its license, and the ledger cards relating to such purchases and collections are appropriately identified; and

(d) the records, documents and correspondence relating to such purchases and collections are filed so as to be readily available for inspection at any time by the [Banking] Department.

§ 401.8 **Advertising**

Every licensee shall maintain samples of all advertising material used by it (including commercial script of all radio broadcasts) for a period of two years from the date of its use and shall inform the [superintendent] Superintendent of the licensed location at which such materials are kept. Such samples shall be available for inspection at any time by a representative of the [Banking] Department.

§ 401.9 **Insurance**

(a) Whenever a licensee requires or provides insurance, it shall furnish to the borrower a standard policy or certificate of insurance at the time the loan is granted or within 30 days thereafter, and shall retain on file in its office a specimen copy of such policy or certificate.

(b) Each licensee shall maintain, at a designated licensed location of the licensee or of any affiliate, a specimen copy of any master or blanket policy used in connection with such insurance coverage.

§ 401.10 **Computation of interest or charges**

(a) In computing interest on the amount financed or in precomputing interest, fractions of a month shall be computed on the basis of the actual number of days; each day in the fraction shall be considered as 1/30 of a month, and the rate of charge for each such day shall be 1/30 of the monthly rate.

(b) In fixing the date of the first installment beyond one month, a licensee shall determine the number of days in excess of one month by:

(1) using the unit period, as defined in Appendix J of Regulation Z, measuring back from the installment due date. All months shall be considered equal. Full months shall be measured from any point in time on a given date to the same point in time on the same date of nother month.

(2) measuring the number of days forward from the loan date to the beginning of the first full unit period. The amount of the first installment may be increased by the amount of interest for the number of days in excess of one month.

§ 401.11 **Authorization for the conduct of other business**

(a) Prior to the commencement of any other business activity which is not licensed under the Banking Law or authorized by article 9 of such law at a licensed location a licensee shall notify the [superintendent] Superintendent, in writing, of such proposed activity. The notification shall contain a detailed description of such activity together with all related documentation. The [superintendent] Superintendent shall approve or deny the conduct of such activity and shall so notify the licensee in writing within 60 days after receiving a properly completed request for such authorization.

(b) Upon written notice to the [superintendent] Superintendent, a licensee may conduct on its premises the following business activities in conformity with section 350(3) of the Banking Law:

(1) an income tax preparation service;

(2) an agency activity performed pursuant to an agency agreement with a money transmitter licensed pursuant to article XIII-B of the Banking Law; and

(3) soliciting and selling of automobile club memberships.

(c) (1) The activities, books, accounts and records which pertain to each of the business activities permitted shall be maintained so as to

be readily separated and distinguished from those of the licensed lender. The name of each business must be prominently displayed on the exterior of the office and separate telephone listings must be maintained for each business.

(2) Joint expenses of the licensed lender and each of the permitted business activities, including heat, rent, electricity, telephone, insurance, supplies, and salaries, shall be apportioned between the licensed lender and each of the permitted business activities in accordance with generally accepted accounting principles.

(d) No licensee shall:

(1) grant, extend, or refinance a loan to any borrower who is delinquent under any sales finance company indebtedness in excess of 60 days unless such new agreement limits recovery by the licensee to 60 days delinquent interest. Where such new loan is granted but no new advance is made, the licensee shall supplement its file with a memorandum stating the reasons for making the loan and the benefit afforded the borrower. Nor shall a licensee grant, extend, or refinance a loan to any borrower who is delinquent under any insurance premium finance or mortgage banker indebtedness;

(2) grant, extend or refinance to any borrower a loan which is contingent upon an additional loan from any other business activity permitted pursuant to section 350(3) of the Banking Law;

(3) extend credit or adjust the terms of existing credit conditioned upon a requirement to purchase membership in any club activity or utilization of any other service; or

(4) require that payments be made via a money order instrument issued by a specific entity.

(e) The [superintendent] Superintendent may, for good cause shown, suspend or revoke, in whole or in part, any authority for the conduct of other business activities and may impose additional conditions in connection with the operation of such other business activities.

§ 401.12 **Filing of rate charts and loan forms**

(a) Within 30 business days after a licensee issues any rate chart(s) setting forth rates or amounts of interest to be used in its licensed lender operation, such licensee shall file with the [superintendent] Superintendent two copies of each such chart(s).

(b) Within 30 business days after a licensee issues any form or forms of loan agreement or related security instruments to be used in its licensed lender operation, a licensee shall file with the [superintendent] Superintendent one copy of each such loan agreement or related security instrument.

(c) Every form of loan agreement or related security instrument and every rate chart(s) of which a copy or copies are required to be filed with the [superintendent] Superintendent pursuant to the provisions of this section shall indicate a date of issuance and an identifying symbol consisting of a combination of numbers and/or letters.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 402
BUDGET PLANNERS

(Statutory authority: Banking Law, § 587)

Sec.
402.1 Definitions
402.2 Application for a license
402.3 Services to be provided by licensee
402.4 Duration of qualifier experience
402.5 Provision for surety bond
402.6 Deposit of assets in lieu of surety bond; assets eligible for deposit
402.7 Deposit agreement; certificate of licensee
402.8 Reports of changes in directors, bylaws and certificate of incorporation of licensee
402.9 Debtors contact with licensees and [Banking] Department of Financial Services
402.10 Right of debtors to rescind contract
402.11 Term and termination; assignment
402.12 Unfair or deceptive acts or practices
402.13 Reports to be filed with the [superintendent] Superintendent
402.14 Changes to licensee's fee structure
402.15 No commingling of licensee's funds
402.16 Licensee's privacy policy
402.17 Office display
402.18 Change of location
402.19 Reports of arrests, convictions, etc.
402.20 Reports of misconduct
402.21 Books and records
402.22 Licensee's return of unused debtor funds
402.23 Effective date

§ 402.1 **Definitions**

For purposes of this Part:

(a) The term control party shall mean any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a licensee.

(b) The term director shall mean any member of the governing board of the licensee whether designated as a director, officer, trustee, manager, governor or by any other title.

(c) The term capital certificate shall have the same meaning as is set forth in Article 5 of the New York Not-For-Profit Corporation Law.

(d) The term debtor shall mean an individual who enters into a contract with a licensee while the individual is a New York resident.

(e) The term licensee shall mean any entity licensed pursuant to Article 12-C of the New York Banking Law.

§402.2 **Application for a license**

(a) Application form. Application for a license shall be made upon a form provided by the New York State [Banking] Department of Financial Services ("[Banking] Department"). Each application shall be signed by every individual
or entity that will be a control party if a license is granted.

(b) Application procedure. Applications should be delivered to the [Banking] Department of Financial Services, Attn: Licensed Financial Services Division, and must be accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. The application shall include the following information:

(1) The exact name and the address of the applicant and its date of incorporation.

(2) The name and the complete business and residential address and occupation of each director, whether or not a member of the governing board, and any other individual who supervises the daily operations of the applicant.

(3) The complete address where the business of the applicant is to be conducted, showing the street and number, if any, post office and building and room number, if any, the office building and room number, if any, and the municipality, county and state.

(4) If the applicant engages in the business of budget planning, as defined in Section 455(1) of the New York General Business Law, in another state(s), identify such state(s) and provide the name and address of the regulatory agency, if any.

(5) A copy of the applicant's filing receipt, certified by the Secretary of the State of New York, or, for out of state budget planners, a certificate of qualification to do business certified by the Secretary of the State of New York.

(6) A copy of the applicant's bylaws.

(7) Letter of Tax Exemption from the Internal Revenue Service indicating 501(c)(3) tax status, if applicable.

(8) Charities Registration Statement from the State of New York Office of the Attorney General, Charities Bureau.

(9) Schedule providing the following information with respect to each
control party: name, prospective corporate title with licensee, employer's name, occupation and title, business address, and residential address.

(10) The name and residence of each holder of capital certificate whether voting or non-voting and/or subvention certificate.

(11) Documentation demonstrating that a director, whether or not a member of the governing board, of such applicant has at least one year of experience in financial services or related fields applicable to budget planning. The [superintendent] Superintendent may require that a director have more than one year experience if it is determined that such

enhanced experience is in accordance with the purposes of Article 12-C of the New York Banking Law.

(12) A set of completed fingerprint cards must be submitted by each individual who signs the application. In the case of an applicant which is not a natural person, each control party shall submit completed fingerprint cards.

(13) A background report prepared by an independent licensed private investigation firm for every applicant. In the case in which an individual is signing an application on behalf of an applicant that is not a natural person, a background report shall be prepared for both such individual and the entity for which he or she is signing the application.

(14) A description of the services that will be provided to the debtor by the applicant citing specifically the topics to be discussed and the related timeframes involved.

(15) A litigation affidavit prepared for each applicant.

(16) A statement of merit describing the proposed operation including but not limited to: 1) a list of all fees to be charged by the applicant 2) the sources of funding and financing available to the applicant and 3) a business plan which describes in detail the budgeting, educational, and counseling services to be offered; the policies and procedures governing each such service including the curriculum to be utilized to provide the educational services; the person(s) responsible for administering each such service and the training to be provided to employees engaged in the rendering of each such service.

(17) The applicant's financial statements for the past three years or, for new corporations, a pro-forma financial statement. Financial statements shall include a balance sheet, a statement of revenues and expenses, and a statement of cash flows.

(18) A copy of the contract to be used with debtors or potential debtors which shall at a minimum include:

(i) a complete list of the debtor's obligations to be adjusted, including the name of each creditor;

(ii) the total fees agreed to for such services, including any adjustments for estimated available rebates from creditors, provided that nothing in this subdivision shall require a licensee to share rebates with its clients;

(iii) the commencement and termination date of the contract;

(iv) a pro-forma statement of the total fees to be charged, including expected available rebates from creditors, expressed as a percentage of the total obligations, principal and interest to be adjusted under such contract.

§ 402.3 **Services to be provided by licensee**

(a) Every licensee shall make an initial assessment of the potential debtor's financial situation taking into account at a minimum, the potential debtor's available and projected income and the existence of other liquid assets as well as the potential debtor's indebtedness to determine if it is in the best economic interest of the potential debtor to enter into a budget planner contract. If not, the licensee shall recommend that the potential debtor seek legal or other appropriate advice as to other alternatives, including bankruptcy.

(b) Every licensee shall provide adequate budgeting, educational and

counseling services directly to the debtor, consistent with the purposes of Article 12-C of the New York Banking Law.

(c) Upon receipt of funds from the debtor, the licensee shall promptly transmit such funds, less any contractual fees which are due and owing to it from the debtor, to the creditor(s).

§ 402.4 **Duration of qualifier experience**

If at any time the licensee ceases to be in compliance with the requirement of section 402.2(b)(11) of this Part, it shall notify the [superintendent] Superintendent within ten calendar days of such noncompliance. Within three calendar days of making such notification, the licensee shall submit to the [superintendent] Superintendent, the name and qualifications of any other director, whether or not a member of the governing board, who has been engaged by the licensee to satisfy the requirements of section 402.2(b)(11).

§ 402.5 **Provision *for surety bond***

(a) Except as provided in section 402.6 below, every licensee shall file with the [superintendent] Superintendent a corporate surety bond in the principal amount of $250,000, or such larger or smaller amount as the [superintendent] Superintendent may require. If the licensee is notified that a larger bond is required, such larger bond shall be in full force within 30 days. A copy of the larger bond shall be submitted to the [superintendent] Superintendent. The corporate surety bond required by the section shall be issued by a bonding company or insurance company authorized to do business in this State. The form of the bond shall be obtained from the Licensed Financial Services Division of the Banking Division of the Department of Financial Services.

(b) Such bond shall be in favor of the [superintendent] Superintendent. The bond, or deposit agreement entered into pursuant to section 402.7 below, shall contain substantially the following language:

"The proceeds of this (bond/deposit agreement) shall constitute a trust fund in favor of the superintendent to be used exclusively to reimburse payments by debtors that have not been properly distributed to creditors or to reimburse fees determined by the [superintendent] Superintendent to be improperly charged or collected and, in the event of the insolvency, liquidation or bankruptcy of such licensee, to pay outstanding [banking] department examination costs and assessments."

(c) Within 90 days of the effective date of Banking Law Section 580, as amended by Chapter 629 of the Laws of 2002, which date is April 7, 2003, each licensee shall comply with the provisions of this section.

§ 402.6 **Deposit of assets in lieu of surety bond; assets eligible for Deposit**

(a) A licensee, in lieu of obtaining a bond pursuant to this Part, may keep on deposit in a branch of a bank, savings bank, savings and loan association, trust company, private banker, national bank, federal savings bank, or federal savings and loan association located in this State, regardless of whether the principal office of the foregoing institution is located within or without this State, subject to the approval of the [superintendent] Superintendent , interest-bearing bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this State, or of a city, county, town, village, school district, or instrumentality of this State or guaranteed by this State, or dollar deposits. The amount of the deposit shall be $250,000 (based on the lower of principal amount or market value), or such larger or smaller amount as the superintendent may require.

(b) In addition to the assets described in paragraph (a) of this section, the following assets are eligible for deposit for purposes of this Part:

(1) commercial paper payable in dollars in the United States provided such paper is accorded the highest rating of a rating service designated by the [Banking Board] Superintendent pursuant to section 61.1 of Part 61 of this Title. In the event that an issue of commercial paper is rated by more than one designated rating service, it must have the highest rating of each;

(2) negotiable certificates of deposit that are payable in the United States and issued by an unaffiliated domestic banking institution or a domestic office of an unaffiliated foreign banking corporation;

(3) banker's acceptances that are payable in the United States and issued by an unaffiliated domestic banking institution or a domestic office of an unaffiliated foreign banking corporation;

(4) bonds which have an investment grade rating from either Moody's Investors Services, Inc., Standard & Poor's Corporation or Fitch Investors' Service, Inc.; and

(5) such other assets as approved by the [superintendent] Superintendent upon written application.

(c) If the [superintendent] Superintendent determines that an asset which otherwise qualifies under subdivisions (1) through (5) of this section is valued for purposes of this Part at less than the amount otherwise required by this Part, the [superintendent] Superintendent shall so notify the licensee which shall thereafter value such asset for purposes of this Part as directed by the [superintendent] Superintendent.

(d) Within 90 days of the effective date of Banking Law Section 580, as amended by Chapter 629 of the laws of 2002, which date is April 7, 2003, each licensee shall comply with the provisions of this section.

§ 402.7 **Deposit agreement; certificate of licensee**

A licensee, which elects to deposit assets of the type listed in section 402.6, shall execute with an approved depository a deposit agreement, which shall be in the form prescribed by the Licensed Financial Services Division of the Banking [Department]Division of the Department of Financial Services. An executed copy of such deposit agreement shall be filed with the [superintendent] Superintendent.

As part of the deposit agreement, the licensee shall agree that prior to the release or substitution of any pledged assets subject to the deposit agreement, the licensee shall file a certificate with the depository which shall specify the following:

(a) the complete title of each pledged asset being withdrawn;

(b) the complete title of each pledged asset being deposited in place thereof;

(c) the interest rate, series, serial number (if any), face value, maturity date, call date, principal amount and market value of each replacement pledged asset;

(d) the aggregate principal amount of all such replacement pledged assets;

(e) the amount, if any, of the funds being withdrawn or deposited; and

(f) a certification that any pledged assets being deposited in exchange for pledged assets being withdrawn comply as to type with the provisions of section 402.6, and that, after giving effect to the exchange, the aggregate of all pledged assets remaining on deposit by the licensee, based in the case of such pledged assets upon the principal amount or market value, whichever is lower, shall be $250,000, or such larger or smaller amount as the [superintendent] Superintendent may require.

§ 402.8 **Reports of changes in directors, bylaws and certificate of incorporation of licensee**

(a) The licensee shall notify the [superintendent] Superintendent in writing, within 10 days of the following: (1) the name and address of any director or individual who supervises the daily operations of the licensee who terminates or alters his or her status with the licensee; and (2) the name of any individual who becomes associated with the business of the licensee as a director or any new individual who supervises the daily operations of the licensee. Any new director or individual shall also furnish a resume. The [superintendent] Superintendent may request other information and documentation from the licensee in determining whether to approve any such director or individual. If the [superintendent] Superintendent objects to any new director or individual, the [superintendent] Superintendent shall notify the licensee of such objection setting forth the reasons therefor.

(b) If the [superintendent] Superintendent finds that a proposed new director, who is not a control party, fails to meet the standards set forth in section 581 of the New York Banking Law, the [superintendent]Superintendent may prohibit such person from serving in any capacity on behalf of the licensee or, in the case of an application for a change of control, deny such application.

The [superintendent] Superintendent may request other information and documentation from the licensee in determining whether to approve any such director. If the [superintendent] Superintendent objects to any new director, the [superintendent] Superintendent shall notify the licensee of such objection setting forth the reasons therefor.

(c) The licensee shall submit to the [superintendent] Superintendent changes to its bylaws or certificate of incorporation within 30 days of such change.

§ 402.9 **Debtors contact with licensees and [Banking] Department**

(a) Every licensee must establish either (i) a toll-free number or (ii) a phone number which may be called collect for the purpose of enabling debtors to make inquiries of or complaints to the licensee. Every debtor must be informed, in writing, of this phone number and the [Banking] Department's toll-free phone number at the time he or she executes the contract.

(b) Every licensee shall furnish to the debtor at least quarterly a periodic statement of account on which the [Banking] Department's toll- free telephone number, as set forth in section 1.2 of Supervisory Policy G 1, shall be displayed conspicuously in at least ten point bold type.

§ 402.10 **Right of debtors to rescind contract**

(a) Every contract between a licensee and a debtor must provide that the debtor may rescind the contract until midnight of the third business day after the day on which the debtor signed the contract. The licensee shall expressly inform every debtor of such provision prior to or simultaneously with the execution of the contract.

(b) Notice of rescission is effective when it is given in writing to the licensee by the debtor.

(c) Notice of rescission, if given by mail, shall be deemed given when deposited in a mailbox with the correct address and proper postage.

(d) If a debtor exercises the right of rescission within the timeframe specified in this section, the licensee shall promptly return to the debtor all fees associated with the contract that were paid to it by the debtor. Such fees shall not include reasonable counseling fees imposed on debtors separate and apart from the execution of a budget planner contract.

§ 402.11 **Term and termination; assignment**

(a) Every contract between a licensee and a debtor shall be limited to a payment period not to exceed 60 months.

(b) Every contract between a licensee and a debtor shall contain a provision which states that the debtor may terminate the contract upon 10 days written notice to the licensee without any fee or penalty. Upon receiving such notice, the licensee shall return to the debtor all monies received from the debtor which are in its possession. No licensee shall communicate any derogatory information about a debtor to a creditor based solely on the fact that a debtor has terminated his or her contract with the licensee. Derogatory information does not include notification that the debtor is no longer a client.

(c) Every contract between a licensee and a debtor shall contain a provision which states that the contract may not be assigned without the written consent of the debtor.

§ 402.12 **Unfair or deceptive acts or practices**

No licensee shall seek to avoid compliance with this Part by any device, subterfuge or pretense whatsoever.

§ 402.13 **Reports to be filed with the [superintendent]** Superintendent

(a) Each licensee shall annually, on or before the first day of February, furnish a report containing the following information and documentation, which shall be certified as accurate by a control party:

(1) Number of clients nationwide and number of debtors in the preceding calendar year;

(2) Number of new clients nationwide and number of new debtors in the preceding calendar year;

(3) For debtors, a schedule of fees charged, including initial fee, monthly fee and specific details as to how these fees are computed;

(4) The agreement utilized for debtors if it has been modified since the date of application or subsequently and has not been previously submitted.

(b) Each licensee shall, on a quarterly basis, report to the [superintendent] Superintendent the highest daily amount of debtor funds held by the licensee for disbursement to creditors. This information shall be certified as accurate by a control party and shall be provided by no later than 10 business days after the end of the preceding quarter.

(c) Each licensee shall, within 90 days of the close of the licensee's fiscal year, submit an independently audited financial statement to the [superintendent] Superintendent.

§ 402.14 **Changes to licensee's fee structure**

Any modification of the licensee's fee structure for debtors shall require that the licensee notify the [superintendent] Superintendent in writing of the proposed change(s) at least thirty calendar days prior to implementation. The [superintendent] Superintendent shall review the fee structure taking into consideration the expenses of the operation, the financial status of the debtor(s) and such other factors as the superintendent shall deem relevant. The licensee may implement the modified fee structure unless the [superintendent] Superintendent disapproves of the change(s) in writing within thirty days of notification of the proposed change(s) unless such time period is extended in writing by the [superintendent] Superintendent.

§ 402.15 No **commingling of licensee's funds**

(a) Accounts established by the licensee to maintain debtor(s) funds must be held in the title of Budget Planner as Agent for the Benefit of Principal(s) (i.e. Debtor(s)). The licensee must maintain, at all times, debtor records in such a manner as to make ascertainable the interests of the debtors, i.e., the records must sufficiently identify the depos-it balance of each debtor on any given day.

(b) Accounts must be maintained in a branch of a bank, savings bank, savings and loan association, trust company, private banker, national

bank, federal savings bank, or federal savings and loan association, located in this State, regardless of whether the principal office of the foregoing institution is located within or without this State.

§ 402.16 **Licensee's privacy policy**

Each licensee shall comply with the privacy provisions contained in Title V of the Gramm-Leach-Bliley Act of 1999, which is found in 15 United States Code* Section 6801 et seq., and the regulations promulgated thereunder by the Federal Trade Commission, which are found in Title 16, Code of Federal Regulations*, Part 313 et seq.

§ 402.17 **Office display**

(a) Every licensed budget planner shall display in full public view at both its principal office and any branch office in New York State, a sign(s) which shall be no less than 20 inches wide and 12 inches high with letters one-half inch in size indicating:
(1) the name and principal address of the licensee;
(2) that the budget planner is licensed and regulated by the New York State [Banking] Department <u>of Financial Services</u>; and
(3) that if a debtor has any inquiries or complaints, he or she may call the New York State [Banking] Department['s] <u>of Financial Services'</u> toll-free number, write to the [Banking] Department <u>of Financial Services</u>, c/o Consumer Services Division, or submit a complaint filed electronically via the Department's web page, in each case as set forth in section 1.1 of Supervisory Policy G 1.
(b) The sign required in subdivision (a) of this section must be in the English language and in any other predominant language(s) spoken by the debtors of the licensee.
(c) The above information shall be conspicuously displayed in at least ten point bold type in the appropriate language(s) on the front page of every contract with every debtor.

§ 402.18 **Change of location**

A licensee seeking to change the location of one of its offices must give written notice to the [superintendent] <u>Superintendent</u> at least 30 days prior to such change. The notice shall:
(a) state the reason(s) for the change;
(b) provide a projection of any increased expenses which may be incurred; and
(c) state the extent, if any, to which the licensee intends to increase fees to its debtors as a result of the change in location.

If the [superintendent] Superintendent determines that there is no reasonable objection to such change of location, the [superintendent] Superintendent shall attach a rider to the license setting forth the change in location.

§ 402.19 **Reports of arrests, convictions, etc.**

A written report shall be made to the [superintendent] Superintendent of any arrest, indictment or conviction (including any plea bargaining agreement) of any control party, director, or employee of the licensee, for the violation of any law within 10 days after such arrest, indictment or conviction becomes known to the licensee.

§ 402.20 **Reports of misconduct**

Every licensee shall submit a report to the [superintendent] Superintendent Immediately upon the discovery of any of the events listed in Part 300 of the [superintendent's] Superintendent's regulations. Such report shall be submitted as set forth in Part 300.

§ 402.21 **Books and records**

(a) Every licensee shall keep its books and records in a manner which will allow the [superintendent] Superintendent to determine whether the licensee is complying with article 12-C of the Banking Law. Every licensee shall preserve its books and records for inspection for a minimum of six years. Specifically, every licensee shall establish and maintain the following to be kept readily available for review by the [superintendent] Superintendent:

(1) All rejected debtor application files which shall contain all documentation relating to the applications. A list of rejected files shall be maintained.
(2) All cancelled debtor application files which shall contain all documentation relating to the applications. A list of cancelled files shall be maintained.
(3) A correspondence folder to contain all correspondence to and from the [Banking] Department, or copies thereof.
(4) A separate file for all written debtor complaints to contain the original complaint, documentation of actions taken and any related correspondence.
(5) A current business plan which describes in detail the budgeting, educational and counseling services offered; the policies and procedures governing each service including the curriculum utilized that provides the educational and counseling services; the person(s) responsible for administering each such service and the training provided to employees engaged in the rendering of each such service.
(b) Ledgers. Each licensee shall maintain a general ledger and such subsidiary ledgers as is necessary to accurately record all assets, liabilities, net assets, income and expenses, and contingencies. Such ledgers shall be posted at least monthly. As of the end of each month a

trial balance shall be prepared and kept readily available for inspection by [Banking] Department personnel.

(c) In the event the licensee conducts business in more than one state, New York debtor files are to be kept separate from the individual client files of other states. Upon request, the New York client files are to be made readily available to the [superintendent] Superintendent or the [superintendent's] Superintendent's duly appointed representative.

(d) In the event that books and records are maintained at a location that is not within the dominion and control of the licensee, the licensee shall provide the [superintendent] Superintendent with a written authorization to examine, have access to, and retain copies of all its books and records relating to its budget planning business.

§ 402.22 **Licensee's return of unused debtor funds**

The licensee must demonstrate a "good faith effort" to locate and refund any monies to the debtor that, for whatever reason, cannot be sent to a creditor.

§ 402.23 **Effective date**

The effective date of these amendments to Part 402 shall be April 7, 2003.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 403
SALES FINANCE COMPANIES

(Statutory authority: Banking Law, § 498-b)

Sec.

403.1 Books and records

403.2 Filing of rate charts and agreements

403.3 Advertising

403.4 Changes in Directors, Officers or Stockholders

403.5 Report of arrests, indictments or convictions

§ 403.1 **Books and records**

(a) Until payment in full, every licensee shall file each finance agreement or duplicate originals thereof, and all insurance documents relating thereto, except those papers returned to the buyer, so as to be readily available for inspection at any time. All such papers and instruments shall bear a common identifying number. (For the purpose of this Part, the term finance agreements shall include retail installment contracts, obligations and credit agreements as defined in Personal Property Law, sections 301 and 401, and Banking Law, section 491.)

(b) Every licensee shall maintain a record which will readily disclose, at any time, the aggregate number and outstanding time balances of all finance agreements held by it.

(c) Every licensee shall maintain an individual ledger card or appropriate combination of records with respect to each finance agreement showing:

(1) The name and address of the buyer.
(2) The name and address of the seller.
(3) The date of the contract.
(4) The amount of the principal balance.
(5) The amount and date each installment is due.
(6) The amount and date each installment is paid.
(7) The number of installments due as set forth in the contract.
(8) The total credit service charge set forth in the contract.

(9) The amount, if any, charged for credit life insurance as set forth in the contract.
(10) The amount, if any, charged for any other insurance as set forth in the contract.
(11) The amount of any rebate granted for anticipation including the date rebated.
(12) The date and amount of late charge collected, identifying the installment for which it was imposed.
(13) The amount and date any extension or renewal charge is collected indicating the period extended or deferred.
(14) The amount, if any, charged to or paid by the buyer, for official fees.
(d) With respect to any finance agreement whether charged off or not, upon which legal proceedings have been taken, every licensee shall clearly indicate in permanent form on the buyer's ledger card or on a separate sheet or card or file bearing the identifying number, the following:
(1) The date of referral to an attorney for collection.
(2) The name and address of such attorney.
(3) The date and terms of any settlement agreed upon or the results of any legal or summary action taken for or against the licensee.
(4) The amount of attorney's fee incurred by the licensee in connection with litigation and charged to or paid by the buyer or other obligor.
(e) If any goods are repossessed, the licensee shall clearly indicate in permanent form on the buyer's ledger card or on a separate sheet or
card or file bearing the identifying number, the following:
(1) Date of repossession.
(2) A record of letters or other communications sent to buyer indicating default or intention to retake.
(3) Itemized list of expenses incurred in the retaking, keeping and storing if charged to or paid by the buyer or other obligor.
(4) Name and address of agency or persons repossessing merchandise.
(5) If the repossessed merchandise is sold, the date, price obtained, and name and address of person or agency to whom sold.
(6) The name and address of auctioneer, if any.
(7) If the licensee is the buyer at sale, the date, price obtained and
name and address of person or agency to whom merchandise is resold.
(f) Every licensee shall preserve such books, accounts and records, including cards used in a card system, if any, for at least six years after making the final entry in respect to any finance agreement recorded therein; provided, however, the preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with this section.

§ 403.2 **Filing of rate charts and agreements**

(a) Within three business days after a licensee issues, distributes, furnishes or makes available any form or forms of finance agreements to be used by retail sellers in connection with retail installment sales, such licensee shall file with the [superintendent] Superintendent one copy of each such form.

(b) Any licensee which issues, distributes, furnishes or makes available any chart or charts setting forth rates or amounts for credit service charges, and/or insurance, to be used in connection with the installment sale of motor vehicles or other goods or services, for the convenience of a retail seller or otherwise, shall file with the [superintendent] Superintendent one copy of each of such charts not later than three days after the issuance thereof.

(c) If, at any time, subsequent to filing, the existing charts are altered, amended or changed, or new charts are issued, one copy of the amendments, alterations, changes or new charts shall be filed with the superintendent not later than three days after the issuance thereof.

(d) The term "chart", as used in this section, means all tables, formulae and instructions for the computation of credit service charges or service charges, including rate or tables for the incidental sale of insurance, and all variations thereof caused by or based upon class, geographic area, maturity or any other reason, and includes any and all printed material explaining or describing the manner in which such charts are to be utilized.

(e) Every form of finance agreement and every chart of which a copy is required to be filed with the superintendent pursuant to the provisions of this section shall bear thereon a date of issuance and an identifying symbol consisting of numbers or letters or a combination thereof.

§ 403.3 **Advertising**

(a) No licensee shall represent, either orally or in writing, directly or indirectly, by any means whatsoever, including, but not limited to, the use of any office sign (except its duly issued license) or the use and circulation of any letterheads, billheads, blank forms, notes, receipts, certificates, circulars or any written or printed or partly written or printed matter whatever that it is licensed by or subject to the supervision of the [superintendent] Superintendent or this State, except by use of the following phrase:

"Licensed, pursuant to Article 11-B of the Banking Law, only for the purpose of engaging in the business of acquiring agreements arising from retail instalment sales."

provided that the use or use and circulation of any written or printed matter containing the foregoing phrase may only be in connection with the licensee's business as a sales finance company.

§ 403.4 **Changes in directors, officers or stockholders**

(a) Every corporate licensee shall within 10 days after the occurrence of the event advise the [superintendent] Superintendent, in writing:

(1) of the name and residence of each stockholder owning 20% or more of the stock of the licensee, and of each director and officer who terminates or alters his status with the licensee, and

(2) the name and residence of each person who becomes a stockholder owning 20% or more of the stock of the licensee, or a director or officer.

(b) If paragraph (2) above is applicable, advise the [superintendent]Superintendent, in writing, whether or not:

(1) any such person has ever previously applied for a license to do business as a sales finance company in this State, and the disposition of such application;

(2) any such person, previously licensed under article 11-B of the Banking Law, has had such license revoked or suspended;

(3) any such person has ever applied to any other State for a license to engage in the business of acquiring retail installment contracts, obligations or credit agreements, and the disposition of such application;

(4) any license to engage in the business of acquiring retail installment contracts, obligations or credit agreements, issued by any other State to any such person, has ever been revoked or suspended.

(5) any such person has ever been found guilty of violating any other provisions of article 11-B of the Banking Law or any other law regulating retail installment sales contracts, obligations or credit agreements;

(6) any such person has ever been responsible for any act or omission in consequence of which a license issued under article 11-B of the Banking Law to any person has been revoked or suspended.

§ 403.5. Report **of arrests, indictments or convictions**

Every licensee shall make a written report to the [superintendent] Superintendent of any arrests, indictment or conviction of such licensee, of any member of a partnership licensee, or of any stockholder owning 20% of more of any class of the outstanding capital stock of a corporate licensee, or of any director or officer thereof, or of any party in interest of any other type of licensee, for any crime in any jurisdiction. Such report shall be made to the superintendent within 10 days after the occurrence of the event becomes known to the licensee.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 404
BUDGET PLANNERS/DELEGATION OF CERTAIN ACTIVITIES

(Statutory authority: Banking Law, § 587)

Sec.
404.1 Definitions
404.2 Explanatory note
404.3 Servicing by a licensee service provider
404.4 Servicing by a non-licensee service provider
404.5 Termination of agreements or contracts

§ 404.1 **Definitions**

For purposes of this Part:

(a) The term "debtor" shall mean an individual who enters into a contract with a licensee and is at that time a New York resident.

(b) The term "licensee" shall mean an entity licensed pursuant to article 12-C of the New York Banking Law.

(c) The term "licensee service provider" shall mean an entity licensed pursuant to article 12-C of the New York Banking Law that holds, or has access to, or can effectuate possession of, by any means, the monies of another licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(d) The term "non-licensee service provider" shall mean an entity that holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(e) The term "control party" shall mean with respect to a licensee, any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a licensee. With respect to a non-licensee service provider it shall mean any individual or entity that has a 10% or more ownership interest

in the non-licensee service provider and/or any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a non-licensee service provider.

§ 404.2 **Explanatory note**

Section 580.4 of article 12-C of the New York Banking Law requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed by the licensee to the creditors of the debtors. In circumstances in which a licensee uses a licensee service provider or a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of a licensee's debtors, the services of such service providers shall be subject to the terms and conditions set forth in sections 404.3, 404.4, 404.5 and 404.6 of this Part, in order to provide the consumer protections afforded to licensees' debtors as mandated under article 12-C of the New York Banking Law.

In complying with these terms and conditions, a licensee that obtains a surety bond pursuant to section 580.4 of the Banking Law and uses the services of a licensee service provider as described, is required to use a licensee service provider that either obtains a surety bond or maintains assets on deposit, in accordance with the provisions of Banking Law section 580.4. Similarly, if the licensee obtains a surety bond and uses the services of a non-licensee service provider as described, the licensee is required to use a non-licensee service provider that maintains assets on deposit, in accordance with the provisions of Section 404.4(c)(2) of this Part.

If, however, a licensee elects to maintain assets on deposit pursuant to Banking Law section 580.4 and uses the services of a licensee service provider or a non-licensee service provider as described, there is no requirement that the licensee service provider or the non-licensee service provider obtain a surety bond or maintain assets on deposit. The licensee service provider would, of course, be required to obtain a surety bond or maintain assets on deposit with respect to its own contracts with debtors for budget planning services, pursuant to Banking Law section 580.4.

§ 404.3 **Servicing by a licensee service provider**

(a) If a licensee seeks to utilize a licensee service provider to hold, or have access to, or to effectuate possession of, by any means,

the monies of another licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies to creditors of the licensee's debtors, the licensee shall give the [superintendent]Superintendent ten days written notice of its intention to do so.

(b) Notice to the [superintendent] Superintendent shall contain the following information:

(1) Name and address of the licensee service provider.

(2) A description of the services to be provided by the licensee service provider.

(3) A copy of the agreement or contract between the licensee and the licensee service provider with respect to the provision of any or all of the services described in section 404.3(a) of this Part.

(4) The highest daily amount of debtor funds of the licensee to be held by the licensee service provider, or to which access is given to the licensee service provider, or to which possession can be effectuated, by any means, by the licensee service provider, or which are distributed by the licensee service provider, or are in the chain of distribution, to the creditors of the licensee's debtors.

(c) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law section 580.4, the [superintendent] Superintendent, in his/her discretion, may require the licensee service provider to obtain a larger surety bond or maintain a greater amount of assets on deposit for the protection of debtors in accordance with the terms and conditions as set forth in [superintendent's] Superintendent regulation parts 402.5, 402.6 and 402.7 in connection with the services being provided by the licensee service provider to the licensee as described in section 404.3(a) of this Part.

(d) A licensee shall not use a licensee service provider until the licensee receives written notice from the [superintendent] Superintendent confirming that the [superintendent] Superintendent has received a copy of the licensee service provider's bond or asset deposit agreement, if required under section 404.3(c)of this Part.

(e) Notwithstanding the provisions of section 404.3(c) of this Part, if a licensee maintains a surety bond and seeks to utilize a licensee service provider, as defined in section 404.1(c) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, consistent with the purposes of section 580.4 of article 12-C of New York's Banking Law and the requirements of this Part.

(f) If the use of an alternate mechanism pursuant to section 404.3(e) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the [superintendent] Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(g) If a licensee proposes the use of an alternate mechanism to a licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, pursuant to section 404(3)(e)* of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the [superintendent] Superintendent that he/she has no objection to such alternate mechanism.

* So in original. Should be 404.3(e) or subdivision (e) of this section.

§ 404.4 **Servicing by a non-licensee service provider**

(a) If a licensee seeks to utilize a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or to be in the chain of distribution of such monies, to the creditors of the licensee's debtors, the licensee shall give the [superintendent] Superintendent ten days written notice of its intention to do so.

(b) Notice to the [superintendent] Superintendent shall contain the following information:

(1) Name and address of the non-licensee service provider.

(2) Name, address, social security number and resume of the officers and directors of the non-licensee service provider, any other individual(s) who supervises the daily operations of the non-licensee service provider and any persons having a 10% or more ownership interest, directly or indirectly, in the non-licensee service provider. If an individual(s) has a 10% or more ownership interest in the non-licensee service provider and such individual is not a control party of the licensee with whom the non-licensee service provider is in contract to provide the services described in section 404.4(a) of this Part, such individual shall provide an affidavit attesting to that fact.

(3) A description of the services to be provided to the licensee by the non-licensee service provider.

(4) A copy of the agreement or contract between the licensee and the non-licensee service provider with respect to the provision of any or all of the services described in section 404.4(a) of this Part.

(5) The highest daily amount of debtor funds to be held by the non-licensee service provider, or to which access is given to the non-licensee service provider, or to which possession can be effectuated, by any means, by the non-licensee service provider, or which are distributed by the non-licensee service provider, or are in the chain of distribution, to the creditors of the debtors.

(c) A licensee shall not use a non-licensee service provider for the services described in section 404.4(a) of this Part until:

(1) The non-licensee service provider gives the [superintendent] Superintendent or his/her authorized representative written authorization to examine all books, records, documents and materials, including those maintained in electronic form, as they relate to the debtors monies held by, or distributed by the non-licensee service provider to the creditors of the debtors, as the [superintendent] Superintendent in his/her discretion deems necessary to protect the interests of the debtors. The cost of such examination shall be borne by the licensee in contract with the non-licensee service provider; and

(2) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law section 580.4, the non-licensee service provider shall maintain assets on deposit for the protection of the debtors whose monies it holds, or has access to, or can effectuate possession of, by any means, or which are distributed, or are in the chain of distribution, by the non-licensee service provider, to the creditors of the debtors. The maintenance of such assets shall be in accordance with the terms and conditions as set forth in [superintendent's] Superintendent's regulation parts 402.6 and 402.7; and

(3) All information required in subdivision (b) of this section and a copy of the non-licensee service provider's asset deposit agreement, if required under section 404.4(c)(2) of this Part, have been provided to the superintendent, and the licensee receives written notice from the [superintendent] Superintendent confirming that the [superintendent] Superintendent has received all such information.

(d) Notwithstanding the provisions of section 404.4(c)(2) of this Part, if a licensee maintains a surety bond and seeks to utilize a non-licensee service provider, as defined in section 404.1(d) of this Part, the superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the non-licensee service provider maintaining assets on deposit, consistent with the purposes of section 580.4 of article 12-C of New York's Banking Law and the requirements of this Part.

(e) If the use of an alternate mechanism pursuant to section 404.4(d) of this Part is proposed by a licensee, the licensee must provide a

description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(f) If a licensee proposes the use of an alternate mechanism to a non-licensee service provider maintaining assets on deposit pursuant to section 404.4(d) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the superintendent that he/she has no objection to such alternate mechanism.

§ 404.5 **Termination of agreements or contracts**

(a) Every agreement or contract between a licensee and a licensee service provider, or a non-licensee service provider, to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies, to creditors of such debtors, shall provide that the agreement or contract shall not be terminated without at least 30 days written notice to the party against whom termination is being sought.

(b) A licensee shall immediately notify the superintendent, in writing, of such termination, upon the sending of by the licensee, or upon the receipt by the licensee, of the notice of termination.

CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 405

PREMIUM FINANCE AGENCIES

(Statutory authority: Banking Law, §§ 555, 555-a, 561)

Sec.
405.1 Books and records
405.2 Filing of rate charts and agreement forms
405.3 Advertising
405.4 Changes in directors, officers or stockholders
405.5 Reports of arrests, indictments or convictions

§405.1 **Books and records**

(a) Until payment in full, every licensee shall file each premium finance agreement or duplicate originals, thereof, and all original documents relating thereto (except those papers returned to the insured) so as to be readily available for inspection at any time. All such papers and instruments shall bear a common identifying number.

(b) Every insurance premium finance agreement which originates with a broker or agent shall contain a statement of the amount of the charge under Insurance Law, section 2119, and a statement as to the services for which such charge is made. A statement that "the services for which the charge pursuant to Insurance Law, section 2119, is imposed are in connection with obtaining and servicing the policies listed hereon" will normally suffice. If such charge is not being financed, the amount thereof, if any, need not be set forth in the calculations required under Banking Law, section 567(3)(b), but may be set forth separately in the agreement with an appropriate indication that it is not being financed. An insurance premium finance agreement which does not originate with an agent or broker need not contain such statement unless the charge pursuant to Insurance Law, section 2119, is being financed. Unless such premium finance agreement contains a statement with respect to such charge, every premium finance agency, as defined in Banking Law, section 554(7), shall obtain from the insured at the time of entering into the premium finance agreement a separate statement, to be signed by the insured, stating that the insured has paid no such charge, or if such charge has been paid, the amount thereof. Nothing herein contained shall

be construed to impose any duty upon a premium finance agency to verify whether a charge pursuant to Insurance Law, section 2119, has been imposed or, if so imposed the amount thereof or the reasons therefor.

(c) Every licensee shall maintain a register, ledger or combination of records containing a summary of premium finance agreements acquired, other than pursuant to a pledge, which can readily show:

(1) the date of acquisition;

(2) the name of the insured;

(3) the identifying number;

(4) the principal balance;

(5) the amount of service charge;

(6) the time balance;

(7) a distribution of proceeds showing the dates, amounts, purposes and names of the person to whom any part of the proceeds is distributed.

The record shall also show the application of any part of the proceeds to an unpaid balance due on an existing premium finance agreement which is terminated by a refinance agreement. For the purpose of this Part, the time balance shall mean the sum of the principal balance plus the amount of the service charge.

(d) Every licensee shall maintain a record which will readily disclose at any time, the aggregate number and outstanding time balances of all premium finance agreements held by it, other than pursuant to a pledge.

(e) Every licensee who is an insurance agent or broker and who holds a license pursuant to and restricted by Banking Law, section 566(1), shall keep a separate record which will readily disclose at all times the aggregate number and outstanding time balances of premium finance agreements reacquired by the agent or broker from a premium finance agency under an agreement, entered into as an incident to the bona fide sale or pledge thereof to the premium finance agency, to reacquire it in case of default by the insured.

(f) Every licensee shall maintain an individual ledger card or appropriate combination of records with respect to each premium finance agreement showing:

(1) the name and address of the insured;

(2) the identifying account number;

(3) the name of the producer;

(4) the amount of the principal balance;

(5) the date of acquisition;

(6) the name or names of the insurers and the policy numbers of the related insurance contracts;

(7) the date from which the service charge is payable and whether such date is the inception date of the insurance contract or the due date of the premium financed or neither;

(8) the service charge;

(9) the time balance;
(10) schedule of required payments.
(g) The ledger card shall also show all receipts setting forth their application to outstanding time balance, fines and other charges, if any, with the type of such charge clearly specified.
(h) With respect to cancellation of insurance the licensee shall record the effective date of such cancellation, the date of notice to the insured and the date of notice to the insurer. There shall also be recorded the amount of return premium, if any, received and the disposition thereof.
(i) In connection with the prepayment of a premium finance agreement the ledger card shall show the amount of service charge refund required to be made and the date such refund is made.
(j) With respect to any premium finance agreement, whether charged off or not, upon which legal proceedings have been taken, every licensee shall clearly indicate in permanent form on the insured's ledger card or on a separate sheet or card or file bearing the identifying account number, the following:
(1) the date of referral to an outside counsel for collection;
(2) the date and terms of any settlement agreed upon or the results of any legal or summary action taken for or against the licensee;
(3) the nature of any collection expense incurred by the licensee in connection with litigation and charged to or paid by the insured or other obligor.
Records bearing any notation made in conformity with this subdivision shall be kept in a binder or file separate from other records, provided that the record as to premium finance agreement which has been paid in full, or which is current as to payments, or concerning which a decision has been officially made to abandon collection efforts of every kind, may be placed elsewhere.

§405.2 **Filing of rate charts and agreement forms**

(a) Within three business days after a licensee issues, distributes, furnishes or makes available any chart or charts setting forth rates or amounts for service charges to be used in connection with premium finance agreements for the convenience of agents or brokers, such licensee shall file with the [superintendent] Superintendent three copies of each such chart.
(b) Within three business days after a licensee issues, distributes, furnishes or makes available any form or forms of premium finance agreements to be used by agents or brokers in connection with premium financing, such **licensee shall file with the [superintendent] Superintendent** three copies of each such form.

(c) Every form of premium finance agreement and every chart of which a copy is required to be filed with the [superintendent] Superintendent pursuant to the provisions of this section shall bear thereon a date of issuance and an identifying symbol consisting of numbers or letters or a combination thereof.

§ 405.3 **Advertising**

No licensee shall represent, either orally or in writing, directly or indirectly, by any means whatsoever, including but not limited to the use of any office sign (except its duly issued license) or the use and circulation of any letterheads, billheads, blank forms, notes, receipts, certificates, circulars, or any written or printed or partly written or printed matter whatever that it is licensed by or subject to the supervision of the [superintendent] Superintendent, except by use of the following phrase:

"Licensed, pursuant to Article XII-B of the Banking Law, only for the purpose of engaging in the business of a premium finance agency."
The use or use and circulation of any written or printed matter containing the foregoing phrase may only be in connection with the licensee's business as a premium finance agency.

§ 405.4 **Changes in directors, officers or stockholders**

Every corporate licensee shall, within 10 days after the occurrence of the event:
(a) Advise the superintendent, in writing:
(1) of the name and residence of each stockholder owning 20 percent or more of any class of the outstanding capital stock of the licensee; and
(2) of each director and officer, who terminates or alters his status with the licensee, and the name and residence of each person who becomes a stockholder owning 20 percent or more of any class of the outstanding capital stock of the licensee, or a director or officer; and
(b) If paragraph (a) (2) of this section is applicable, advise the [superintendent] Superintendent in writing whether or not:
(1) any such person has ever previously applied for a license to do business as a premium finance agency in this State, and the disposition of such application;
(2) any such person, previously licensed under article XII-B of the Banking Law, has had such license revoked or suspended;
(3) any such person has ever applied to any other state for a license to engage in the business of a premium finance agency, and the disposition of such application;
(4) any license to engage in the business of a premium finance agency, issued by any other state to any such person has ever been revoked or suspended;

(5) any such person has ever been found by the [superintendent] Superintendent to have violated any of the provisions of article XII-B of the Banking Law or any rule or regulation of the [superintendent] Superintendent; and

(c) Obtain from each person who becomes a stockholder owning 20 percent or more of any class of the outstanding capital stock of the licensee, or a director or officer, and transmit to the superintendent the following:

(1) an affidavit stating whether he has ever been indicted or convicted for any crime in any jurisdiction;

(2) a statement on the form required by the [Banking] Department of Financial Services certifying to the financial condition of such person;

(3) a statement or resume of the occupational activities of such person during the previous 10-year period.

§ 405.5 **Reports of arrests, indictments or convictions**

Every licensee shall make a written report to the [superintendent] Superintendent of any arrest, indictment or conviction of such licensee or of any member of a partnership licensee, or of any stockholder owning 20 percent or more of any class of the outstanding capital stock of a corporate licensee, or of any director or officer thereof, or of any party in interest of any other type of licensee, for any crime in any jurisdiction. Such report shall be made to the [superintendent] Superintendent within 10 days after the occurrence of the event becomes known to the licensee.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 406
MONEY TRANSMITTERS

(Statutory authority: Banking Law, §§ 649, 659)

Sec.
406.1 Introduction
406.2 Definitions
406.3 Conduct of business
406.4 Agents and subagents of Money Transmitters
406.5 Agency Contracts
406.6 Advertising and solicitation
406.7 Examinations
406.8 Revocation; possession
406.9 Books and Records
406.10 Reports
406.11 Changes in control; reports; application
406.12 Additional reporting
406.13 Provision for corporate surety bonds
406.14 Deposit of securities
406.15 Payments by uninsured transmitters of money to fund
406.16 Communications

§ 406.1 **Introduction**

This Part contains regulations relating to the transmission of money by licensees and their agents under Article XIII-B of the Banking Law.

For purposes of this Part, the business of transmission of money will be divided into three categories: the issuance and sale of travelers checks to the public, the sale and issuance of money orders to the public, and the transmission of money on behalf of the public by any and all other means or manner including but not limited to transmissions within this country or to locations abroad by wire, check, draft, facsimile or courier. Although a number of the subdivisions of this Part apply to all licensees and their agents and subagents, other subdivisions apply exclusively to those transmission activities that fall within the scope of the third category of transmission. As provided in Banking Law, section 641, the provisions contained in this Part shall not apply to an agent of a payee as defined in section 406.2 (a) of

this Part. Only agents of a payee which do not engage in any money transmission activities other than as an agent of a payee are exempt from the provisions of this Part.

§ 406.2 **Definitions**

For purposes of this Part:

(a) the term money transmission shall include all instruments sold or issued including travelers checks, money orders, checks, drafts, orders, wire or electronic transfers, facsimile transfers and shipments by courier for the transmission or payment of money.

(b) the term travelers check means an instrument for the payment of money which:

(1) is designated on its face by the term travelers check or by any similar term or spelling or is commonly known and marketed as a travelers check, and not by the term money order or by any substantially similar term; and

(2) (i) if issued in United States currency, is in the sum of $10 or a multiple thereof, if less than $100, or in the sum of $100 or a whole multiple thereof; or

(ii) if issued in any foreign currency, is in an even denomination of such currency; and

(3) contains a provision for a specimen signature of the purchaser to be completed at the time of purchase; and

(4) contains a provision for a counter-signature of the purchaser to be completed at the time of negotiation.

(c) the term money order means an instrument for the payment of money (whether or not negotiable) which:

(1) is designated on its face by the term money order or by any similar term or is commonly known and marketed as a money order, and not also by the term travelers check, official check, cashiers check, bank check or by any substantially similar term; and

(2) is customarily subject to a dollar limit stated on its face which has been set by the drawer; and

(3) requires the purchaser to sign its name, provide its address and to fill in the name of the payee.

(d) the terms person, licensee and check shall have the respective meanings specified in Banking Law, section 640.

(e) the term agent and subagent means any person designated or appointed by the licensee to engage in money transmission at locations other than an office of the licensee as provided in Banking Law, section 648, but does not include licensed cashers of checks which act as agents of licensed money transmitters under applicable regulations.

(f) the term corporate licensee shall include any licensee, wherever organized, which is a corporation or association, having written articles of incorporation or association, but shall not include a partnership.

(g) the term principal officer means chairman of the board, president, chairman of the executive committee, executive vice-president, comptroller, secretary, treasurer and any other persons who perform similar functions.

(h) the term principal stockholder means any person (or group of persons acting in concert) who is the beneficial owner of 25 percent or more of outstanding voting shares of any class.

(i) the term control shall have the meaning specified in Banking Law section 652-a.

(j) the terms fund, holder(s), New York instrument(s), New York traveler's check(s), purchaser(s) and uninsured money transmitter shall have the respective meanings specified in Banking Law, section 653.

(k) notwithstanding the foregoing definitions, no person who issues or delivers a check, draft or other instrument or document for the transmission or payment of money or which evidences an obligation for the transmission or payment of money, shall be deemed to have issued or sold such check, draft, instrument or document, within the meaning of sections 653(6) , 653(9) or 640(4) of the Banking Law if such check, draft instrument or document:

(1) is sold or issued in connection with a loan or extension of credit other than a loan or extension of credit to purchase a money order or New York traveler's check; or

(2) is sold or issued to effect a withdrawal or transfer of funds from a credit balance maintained with the seller or issuer; or

(3) evidences or relates to a credit balance; or

(4) evidences an obligation of a banking institution insured by a federal insuring agency; or

(5) evidences an obligation arising out of a letter of credit, borrowing or similar type of financing or arising out of the purchase or sale of securities; or

(6) is denominated in and arises out of a transaction involving a currency other than U.S. dollars, if the person purchasing such check, draft, instrument or document is engaged in the business of purchasing or selling such currency; or

(7) effects a transfer of funds between, among, or by order of banking institutions and clearinghouses, or is transferred in connection with the collection of such check, draft, instrument or document.

(1) the term agent of a payee means any person authorized by a payee to receive funds on behalf of the payee and to deliver such funds received from the payor to the payee.

§ 406.3 **Conduct of business**

(a) Every licensee engaged in money transmission, except one engaged exclusively in the sale or issuance of travelers checks and/or money orders, shall post and at all times display in full public view, at both its principal office and at each branch office in this State, where the general public is admitted and money transmission is carried out, a sign or signs in the English language and in any other predominant language spoken by the customers of the licensee each of which sign shall be no less than 20 inches wide and 12 inches high with letters at least one- half inch in height indicating the following:

(1) the name and principal address of the licensee, the type of transmission activity the licensee is authorized to engage in, and a telephone number established by the licensee to answer questions and register complaints; and

(2) that the licensee is licensed and regulated by the New York State [Banking] Department of Financial Services and that unresolved consumer complaints may be mailed to the New York State [Banking] Department of Financial Services, Consumer Services Division, as set forth in section 1.1 of Supervisory Policy G 1.

(b) Every licensee engaged in money transmission in this State, except one engaged exclusively in the sale or issuance of travelers checks and/or money orders, shall affix a notice on the front window or entrance door of its principal office and at each branch office in this State, where the general public is admitted and money transmission activities are carried out indicating the following information:

(1) the name of the licensee; and

(2) the statement that the licensee is "Licensed as a Money Transmitter by the [Banking] New York State Department of [the State of New York] Financial Services ".

Each such notice shall be no less than 4 inches by 6 inches.

(c) No licensee shall sell or issue any travelers check, money order, check, draft, or other instrument or order for the transmission or payment of money in or from this State unless the name of the licensee as maker, drawer, acceptor or otherwise as obligor shall clearly appear on the face of the instrument.

(d) No licensee shall engage in money transmission directly or through the use of agents in New York without having filed within 10 days of adoption the form of payment instrument with the [superintendent]Superintendent. All internationally payable instruments or receipts therefore shall clearly show on the face thereof the name of the licensee as the person liable thereon.

(e) Every licensee which has appointed or designated agents in this State shall require each agent under its written agency contract to conduct the authorized money transmission activities through the licensee.

(f) A receipt, or other evidence of acceptance of funds shall be given to every person who utilizes a licensee to transfer funds. The receipt issued by the licensee shall contain the information required in subdivision (a) (1) and (c) of Part 406.3 and the following additional information:

(1) a statement of the liability of the licensee for nondelivery or delayed delivery;

(2) a statement of the refund policy of the licensee;

(3) the dollar amount of transmission; and

(4) the fee charged.

(g) Licensees are subject to supervision and regulation by the New York State [Banking] Department of Financial Services and must exercise reasonable supervision over agents and subagents to insure compliance with applicable laws, rules and regulations with regard to money transmission.

§ 406.4 **Agents and subagents of money transmitters**

(a) Each licensee must submit to the [superintendent] Superintendent as of the close of business on December 31, 1989 a written description of the licensee's general procedures by which it intends to enter into agency contracts to engage in money transmission in this State. This description must include the licensee's policies and procedures and other details regarding the following matters:

(1) a brief summary of the proposed money transmission activities to be engaged in by the agents and subagents and a description of how money is to be transferred to the beneficiaries and an undertaking by the licensee to assume responsibility for consumer losses incurred through an agent's unauthorized activities or as a result of violations of any laws or regulations; and

(2) the number of agents and subagents and projected sales volume for travelers checks, money orders and all other transmission instruments sold; and

(3) the procedures for agent and subagent selection including the method of ascertaining the agent's and subagent's credit standing; and

(4) the procedures that agents and subagents shall follow relating to:

(i) recordkeeping;

(ii) safeguarding travelers checks, money orders and all other instruments or orders for the transmission or payment of money;

(iii) remittance of proceeds of sales of travelers checks, money orders and all other instruments or orders for transmission or for payment of money sold to the public (i.e., time within which such proceeds are required to be remitted to the licensee, and remittance procedures);

(iv) reporting procedures to be followed by agents and subagents when reporting to the licensee the sale of travelers checks, money orders and all other instruments or orders for the transmission or payment of money sold to the public including but not limited to the time within which such sales are to be reported to the licensee, and procedures for reporting such sales; and

(5) copies of any documentation which the licensee will require its agents and subagents to furnish the public in connection with the money transmission activities including but not limited to samples of travelers checks, money orders and all other instruments or orders for the transmission or payment of money sold, including forms and receipts; and

(6) procedures for distributing policies and procedures pertaining to agents and subagents and licensee's program to assure agent's and subagent's compliance; and

(7) compensation arrangement with agent and subagent; and

(8) bonding and insurance of agents and subagents; and

(9) the licensee's policy relating to loans to and investment in agents and subagents except loans and investments made by a regulated

financial institution in the ordinary course of its business; and

(10) in the case of money transmissions other than by sale of money orders and travelers checks, the names and addresses of correspondents used to make delivery of money to beneficiaries; and

(11) such other information, and documentation as the superintendent may require.

Such information is to be provided within 45 days of December 31, 1989 and at such other times as the [superintendent] Superintendent may require.

(b) In addition, each licensee shall submit to the [superintendent] Superintendent as of the close of business on December 31, 1989 the following information:

(1) a listing in alphabetical order of its agents and subagents in this State showing their full names and addresses and licensee assigned identification number(s) if any grouped by the category of transmission activity the licensee has authorized the agent and subagent to conduct on its behalf; and

(2) a specimen copy of the agency contract between the licensee and its agents and subagents including all attachments, amendments and supplements.

Such information is to be provided within 45 days of December 31, 1989 and at such other times as the [superintendent] Superintendent may require.

(c) Upon any change in any material aspect of a licensee's policies and procedures, including but not limited to the items enumerated under paragraphs (a)(3) through (11) of Part 406.4, the licensee shall file with the [superintendent] Superintendent a written description of the change within 10 days of implementation.

(d) (1) Every agent and subagent, other than a bank, which is engaged in money transmission, except one engaged exclusively in the sale or issuance of travelers checks and/or money orders, shall post and at all times display in full public view, at both its principal office and at each branch office in this State a sign or signs in the English language and in any other predominant language spoken by its customers. Each sign shall be no less than 20 inches wide and 12 inches high with letters at least one-half inch in height prominently indicating the following:

(i) name, address and telephone number of the principal office of the agent and subagent and the type of money transmission activity which the agent and subagent has been authorized to conduct by the licensee; and

(ii) name and address of the licensee; and a telephone number established by the licensee to answer questions and register complaints; and

(iii) that the licensee is licensed and regulated by the New York State [Banking] Department of Financial Services and that unresolved consumer complaints may be mailed to the New York State [Banking] Department of Financial Services, Consumer Services

Division, as set forth in section 1.1 of Supervisory Policy G 1.

(2) Every agent or subagent, other than a bank, which is engaged in money transmission, except one engaged exclusively in the sale or issuance of travelers checks and/or money orders, shall be provided by the licensee with a notice no less than 4 inches by 6 inches to publicly display on the agent's and subagent's front window or entrance door containing the following information:

(i) the name of the licensee; and

(ii) the statement that the licensee is "Licensed as a Money Transmitter by the New York State [Banking] Department of [the State of New York] Financial Services "; and

(iii) its designation of the agent to act in such capacity.

(e) A receipt, or other evidence of acceptance of funds shall be given to every person who utilizes an agent and subagent of a licensee to transfer money. The receipt issued by the agent and subagent of the licensee shall contain the information required in section 406.3(f) of this Part and the following additional information:

(1) that the licensee is liable for the nondelivery or delayed delivery;

(2) the refund policy of the licensee;

(3) the dollar amount of transmission; and

(4) the fee charged.

§ 406.5 **Agency contracts**

(a) All written contracts between licensees and agents and subagents entered into after the effective date of this Part shall provide the following:

(1) a description of the category or categories of money transmission activity the licensee is authorized to lawfully engage in under its license which it may do through an agent and subagent; and

(2) a prohibition in the licensee's agents and subagents acting on behalf of the consumer as a courier for the transmission of money which activity requires licensing as a money transmitter and a requirement that all money orders sold may not be retained by the agent and subagent but must be given to the purchasers of the instruments for their own delivery to the beneficiary; and

(3) an acknowledgment that the [superintendent] Superintendent reserves the right to
inspect, with or without prior notice to the licensee or agent and subagent(s), the books and records of agent and subagent(s) of the licensee and that the expenses incurred in making any such inspection shall be borne by the licensee; and

(4) that agents and subagents shall not sell any travelers check,

money order or other money transmission instrument in this State unless the name of the licensee shall clearly appear on the face of the instrument and the licensee shall not condition its engagement as obligor under the payment instrument upon the remittance of the proceeds of sale from the agent and subagent; and

(5) that agents and subagents shall not sell any travelers check, money order or other money transmission instrument in this State, unless the agent and subagent has provided the [superintendent] Superintendent with a written
and irrevocable consent to examine, have access to, and retain copies of all of its books and records, wherever maintained, relating to these activities; and

(6) that agents and subagents in this State are under a duty to act only as authorized under the agency contract and that an agent and subagent who exceeds its authority is subject to cancellation of the agency contract and may result in further disciplinary action against the licensee by the [superintendent] Superintendent.

(b) For each contract entered into prior to the effective date of this Part, a rider containing paragraphs (a)(1)-(6) of this section shall be sent by each licensee to each of its agents and subagents in New York within 45 days of the effective date of this Part.

§ 406.6 **Advertising and solicitation**

(a) No licensee or agent or subagent engaged in money transmission, except one engaged exclusively in the sale or issuance of travelers checks and/or money orders, shall advertise its money transmission services without including the name of the licensee and the legend that such licensee is "Licensed as a Money Transmitter by the [Banking] New York State Department of Financial Services [the State of New York]".

(b) No licensee or agent and subagent who sells or issues travelers checks or money orders in this State shall advertise its business in New York without including the legend: "Licensed as a Money Transmitter by the [Banking] New York State Department of [the State of New York] Financial Services ".

(c) Every licensee and designated agent and subagent shall maintain a complete file of its advertisements (including commercial scripts of all radio and television broadcasts) for examination by the superintendent for a period of at least two years from the date of publication.

(d) The legend required in subdivisions (a) and (b) of this section shall apply only to advertising in New York State.

§ 406.7 **Examinations**

The [superintendent] Superintendent shall have the power to examine any licensee at any time when in the judgment of the [superintendent] Superintendent such examination is necessary or advisable to determine:

(a) the financial condition of the licensee;

(b) the safety and soundness of the conduct of its business;

(c) the policies of its management;

(d) whether the requirements of law have been complied with in the administration of its affairs;

(e) whether the licensee has policies and procedures sufficient to control the activities of any authorized agents; and

(f) such other matters, as the [superintendent] Superintendent may determine, including but not limited to any activities of the licensee outside this State if in the opinion of the [superintendent] Superintendent such activities may affect the licensee's money transmission business in this State.

§ 406.8 **Revocation; possession**

(a) Licenses granted under Article XIII-B of the Banking Law may be revoked for the grounds specified in section 642 of the Banking Law after notice and hearing conducted in accordance with the State Administrative Procedure Act and [Banking] Department regulations.

(b) The [superintendent] Superintendent may take possession of the business and property of any licensee as provided in Article XIII-A of the Banking Law for the reasons stated therein.

§ 406.9 **Books and records**

(a) Each licensee shall make, keep and preserve its books and records in such form, in such manner and for such time as is in accordance with generally accepted accounting principles and in a condition which will allow the [superintendent] Superintendent to determine whether the licensee and agent and subagent is complying with Article XIII-B of the Banking Law. Preservation by photographic reproduction or in photographic form shall constitute compliance with the requirements of this Part.

(b) The books and records maintained by each licensee and agent shall include:

(1) a daily record of instruments sold by date;

(2) a general ledger containing all asset, liability, capital, income and expense accounts which general ledger shall be posted at least monthly;

(3) remittance reports received from agents and subagents;

(4) bank statements and bank reconciliation records which shall be kept for three years;

(5) outstanding money transmission instruments by year of sale shall be maintained for at least five years after the time which such instruments have been deemed, under the Abandoned Property Law, to be abandoned property;

(6) each money transmission instrument paid for a period of three years after the date of payment;

(7) a list of the names and addresses of all the agents who sell or issue its money transmission instruments and copies of its agency agreements thereunder.

(c) Every licensee shall:

(1) maintain the records relating to its money transmission instruments in New York; or

(2) provide the [superintendent] Superintendent with a written and irrevocable authorization to examine, have access to, and retain copies of all its books and records, wherever maintained, relating to its money transmission instruments.

(d) Each licensee or agent and subagent which is engaged in any form of money transmission, as defined in section 406.2(a) of this Part, including any engaged exclusively in the sale or issuance of travelers checks and/or money orders, shall comply with Federal Bank Secrecy Act Regulations as set forth in 31 CFR Part 103.28.

§ 406.10 **Reports**

Each licensee shall file the following reports giving such information as may be required by the [superintendent] Superintendent concerning its business and operations.

(a) Reports of locations. A licensee engaging in money transmission in this State, either directly or through agents and subagents shall file with the superintendent, in connection with its application for license or license renewal, a statement showing the number of such locations within this State and the number of such locations elsewhere in the United States as of 30 days preceding such filing.

(b) Financial reports. Every licensee shall file with the [superintendent] Superintendent quarterly financial statements within 45 days following the close of the licensee's fiscal quarter and an annual financial statement, audited by an independent certified public accountant, within 120 days following the close of the licensee's fiscal year. Such financial statements shall include a balance sheet, a profit and loss statement, and a statement of retained earnings.

(c) Reports of Misconduct. Every licensee shall submit a report to the [superintendent] Superintendent immediately upon the discovery of any of the events listed in Part 300 of the [superintendent's] Superintendent's Regulations. Such report shall be submitted as set forth in Part 300.

(d) Reports of Business. Every licensee shall submit a report to the [superintendent] Superintendent within 45 days following the close of each calendar quarter reflecting in dollars the monthly sales of travelers checks, money orders, checks, drafts, wire or electronic transfers or other instruments or orders for the transmission or payment of money in or from this State by the licensee and its agents and subagents and the aggregate monthly sales of such instruments sold elsewhere in the United States by the licensee and its agents and subagents during the previous calendar quarter. Sales of money orders, travelers checks and all other such instruments sold should be reported separately for each instrument. In addition at the end of every calendar quarter every licensee should report the amount of the permissive investments (as defined in section 640(9) of the Banking Law) it holds and the amount of its outstanding liabilities reported separately for travelers checks, money orders and all other such instruments sold.

§ 406.11 **Changes in control; reports; applications**

(a) As required under Banking Law, section 652-a, no person may acquire direct or indirect control (as defined in said section) of a licensee without the prior approval of the superintendent. In addition, an unauthorized acquisition of control may result in the voiding of the license to engage in the business of money transmission as provided therein.

(b) Without limiting the responsibilities of persons seeking to acquire control of licensees to make application to the superintendent under section 652-a of the Banking Law and subdivisions (d) and (e) of this section, licensees shall be required to report to the [superintendent] Superintendent the following information within five days of the date the licensee becomes aware of such information:

(1) the name and residence of each person (or each member of a group of persons acting in concert) who becomes an owner of 10 percent or more of the outstanding shares of any class (voting or nonvoting) of the licensee; and

(2) the name and residence of each person who is to become a partner, director or principal officer of the licensee.

(c) Within 10 days after any principal officer of a licensee shall be appointed, the licensee shall, with respect to said officer, cause to be

filed with the [superintendent] Superintendent the information contained in subdivision (e) of this section.

(d) Prior to acquiring direct or indirect control (as defined in section 652-a of the Banking Law) of a licensee, the proposed acquirer shall make application for approval of the [superintendent] Superintendent, said application to contain the information described in subdivision (e) of this section.

(e) (1) name and address of the applicant, if an individual or, if a partnership, of its partners or, if a corporation or association, of the directors, trustees and principal officers thereof and of any stockholder owning ten percent or more of the outstanding shares of any class (voting or nonvoting) of the licensee and a description of the present employment or occupation and of all previous employment or occupation during the preceding 15 years (including a statement as to whether during such period the applicant has been discharged from employment, and if so, for what reason); and

(2) a description of:

(i) any criminal action brought against the applicant;

(ii) any civil action brought against the applicant (excluding any civil action in which the amount in controversy was less than $25,000 or which terminated more than 15 years previously and excluding any domestic relations action);

(iii) any proceeding brought to declare the applicant bankrupt;

(iv) any such criminal or civil action brought against, or proceeding to declare bankrupt, any partnership, corporation or association, other than the licensee, of which at the time the applicant was a partner, principal stockholder or principal officer, and the disposition of such action or proceeding; and

(3) whether the applicant or any partnership, corporation or association of which at the time the applicant was a partner, principal stockholder, director or principal officer has applied for a license in this state or any other state to engage in money transmission, the disposition of such application, and if such license was granted, whether it was ever suspended, revoked or its renewal refused; and

(4) the number (if any) of shares of each class of stock of the licensee and the amount (if any) of obligations (in excess of $5,000) of the licensee of which the applicant intends to be beneficial owner immediately after the transaction to which the report relates; and

(5) a description of any other partnership, corporation or association (excluding any corporation or association organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual) of which the applicant is partner, principal stockholder, or principal officer; and

(6) any other information the [superintendent] Superintendent may require.

(f) Obligation to inform. Every corporate licensee shall inform in writing every person (and every member of any group of persons acting in concert) who to the licensee's knowledge is a principal stockholder of the licensee of the reporting requirements under this Part.

§ 406.12 **Additional reporting**

As required under Banking Law, section 643.2 the licensee shall give notice to the [superintendent] Superintendent by registered or certified mail of any action which shall be brought against the licensee and of any judgment which shall be entered against the licensee by such purchaser or holder of a New York instrument or a New York traveler's check, with details sufficient to identify the action or judgment, within 10 days after the commencement of any such action or notice to the licensee of entry of any such judgment. In addition every licensee shall, immediately after the occurrence of the event becomes known to the licensee, advise the superintendent in writing of:

(a) any criminal or civil action (excluding any civil action in which the amount in controversy is less than $25,000 and excluding any domestic relations action) brought against the licensee or any proceeding to declare the licensee bankrupt, and of any judgment or settlement entered in such an action or proceeding, and

(b) any criminal or civil action (excluding any civil action in which the amount in controversy is less than $25,000 and excluding any domestic relations action) brought against, or any proceeding brought to declare bankrupt, any person who is a partner, principal stockholder, director or principal officer of the licensee, or any partnership, corporation or association other than the licensee of which such person is a partner, principal stockholder, or principal officer, and of any judgment or settlement entered in such an action or proceeding.

§ 406.13 **Provision for corporate surety bonds**

(a) Every person licensed to transmit money pursuant to Banking Law, section 641, shall file with the [superintendent] Superintendent one or more corporate surety bonds, in form satisfactory to the [superintendent] Superintendent in such principal amount as the [superintendent]Superintendent shall have determined. Such corporate surety bond shall be issued by a bonding company or insurance company authorized to do business in this State.

(b) One such bond shall be in favor of the [superintendent] Superintendent for the protection of the purchasers and holders of New York instruments sold by the licensee. The principal amount of such bond shall be not less than $500,000 and it shall contain substantially the following language:

"The proceeds of this bond shall constitute a trust fund for the exclusive benefit of the purchasers and holders of the licensee's New

York instruments. In the event of the insolvency or bankruptcy of the licensee, the proceeds of the bond shall be paid to the [superintendent] Superintendent forthwith for disposition in accordance with the applicable provisions of the Banking Law; provided, however, if any New York instruments have been assigned to the Fund, the proceeds of the bond shall constitute a trust fund for the benefit of, and shall be payable to, the fund to the extent of such assignment. As used herein, the terms "New York instruments", "fund", "purchasers," and "holders" shall have the meanings ascribed to them in section 653 of the Banking Law."

(c) If the licensee engages in the sale of New York traveler's checks, such licensee shall file with the [superintendent] Superintendent a separate bond. Said bond shall be in favor of the [superintendent] Superintendent for the protection of the purchasers and holders of New York traveler's checks sold by the licensee. The principal amount of such bond shall not be less than $750,000 and it shall contain substantially the following language:

"The proceeds of this bond shall constitute a trust fund for the exclusive benefit of the purchasers and holders of the licensee's New York traveler's checks. In the event of the insolvency or bankruptcy of the licensee, the proceeds of the bond shall be paid to the [superintendent] Superintendent forthwith for disposition in accordance with applicable provisions of the Banking Law. As used herein, the terms "New York traveler's checks", "purchasers" and "holders" shall have the meanings ascribed to them in section 653 of the Banking Law."

§ 406.14 **Deposit of securities**

A licensee who in lieu of filing a corporate surety bond elects to deposit securities pursuant to Banking Law, section 643(3), shall execute with the depository bank, trust company or national bank a deposit agreement in form satisfactory to the [superintendent]Superintendent. An executed copy of this deposit agreement shall be filed with the [superintendent] Superintendent.

§ 406.15 **Payments by uninsured money transmitters to fund**

Upon receipt of notice of assessment issued pursuant to section 657 of the Banking Law, each uninsured money transmitter shall provide the [superintendent] Superintendent, as administrator of the State Transmitter of Money Fund, within such reasonable time as shall have been specified in such notice, a statement certified by an executive officer, showing the dollar amounts of the New York instruments issued by the uninsured money transmitter that were outstanding at the end of each calendar quarter for the calendar year preceding that in which the assessment is made, and the average of said amount. (Said average shall consist of the quotient obtained when dividing the sum of such amounts by the number of calendar

quarters involved.) Upon receipt of such statement, the [superintendent] Superintendent shall notify the uninsured money transmitter of the percentage of said average constituting the assessment, and the uninsured money transmitter shall forthwith pay the resulting assessment to the [superintendent] Superintendent. Said percentage shall be uniform as to all uninsured money transmitters. In no event shall the total amount assessed in any one year against any uninsured money transmitter pursuant to section 657 of the Banking Law exceed two per centum of the New York instruments of such uninsured money transmitter, which were outstanding at the end of the calendar year preceding the year in which such assessments were made or $125,000, whichever is less.

§ 406.16 **Communications**

It is requested that licensees direct their [Banking] Department correspondence, reports, notices, statements and applications to the Licensed Financial Services Division of the Banking Division of the Department of Financial Services at the address set forth in section 1.1 of Supervisory Policy G 1.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 407

LICENSING OF OUT-OF-STATE LENDERS WHO SOLICIT, BY MAIL, SMALL LOANS IN NEW YORK STATE

(Statutory authority: Banking Law, § 360)

Sec.
407.1 Issuance of a license
407.2 Loans, books and records
407.3 Offices within New York State
407.4 Lock box for payments
407.5 Provision in lieu of lock box

§ 407.1 **Issuance of a license**

(a) Application form. Application for a license shall be made upon a form provided by the Superintendent. Such form may be obtained at the [Banking] Department of Financial Services at the address set forth in section 1.1 of Supervisory Policy G 1.

(b) Application procedure. Applications shall be filed with the [Bank-Ing] Department of Financial Services at the address set forth in section 1.1 of Supervisory Policy G 1, and must be accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. Accompanying the application should be the following additional information:

(1) Copy of organizational chart, annual reports of last three years, and list of officers and directors of applicant and of all affiliated corporations, joint stock associations or business trusts.

(2) Copy of certificate of incorporation (with all amendments) of the applicant together with copy of qualification to do business in New York, both of which should be certified by the Secretary of State or such other governmental authority who controls such State records.

(3) If a new corporation, certified balance sheet of the applicant, certified list of stockholders and copy of minutes of the corporation from inception to date of filing of application. Minutes should reflect organization of corporation, appointment or election of directors and officers, and designation of bank depositaries.

(4) Confirmation that applicant has sufficient cash in bank or other acceptable assets to satisfy legal requirement of $25,000.

(5) Confirmation from applicant that it will conform to the provisions

of section 352 of the Banking Law.

(6) Questionnaires and financial statements, on forms provided by the department, of each officer, director, manager, major stockholder or other party-at-interest in the applicant.

(7) If an established corporation, list of holders of one percent or more of any class of stock, bonds or other securities.

(8) Certified copy of the minutes of the board of directors of the corporation authorizing filing of the application.

(9) List of all States in which applicant and/or any affiliated company is licensed to operate in the field of finance including banking, insurance, sales finance, small loans, insurance premium financing, etc. together with the name of the operating company and the name, title and address of the State supervisor.

(10) Statement of how licensing of the applicant will promote public convenience and advantage. It should be noted that the population and other standards set forth in supervisory policy LL-1 will not be applicable.

(11) Letter from State regulatory agency in which parent corporation is headquartered and where licensee's records are domiciled agreeing to permit access to New York State [Banking] Department of Financial Services personnel to the licensee's records pertaining to loans made to New York State residents.

§ 407.2**. Loans, books and records**

(a) Every licensee must maintain records as provided in section 401.1 of the [superintendent's] Superintendent regulations. All such records and supporting documents and any additional records which the [superintendent] Superintendent may require relating to loans made to New York State residents must be kept separate and apart from any other records of the licensee and must be made available for examination at any time by representatives of the New York State [Banking] Department of Financial Services. The licensee will be required to pay the cost of all examinations, including travel expenses for [Banking] Department personnel.

(b) Every licensee shall be subject to the relevant provisions of sections 401.4, 401.5 and 401.6 of the [superintendent's] Superintendent regulations.

§ 407.3 **Offices within New York State**

(a) No licensee may operate any place of business within New York State, except for the sole purpose of handling inquiries and complaints of existing borrowers of the licensee. At such an office, no loans may be made, no loan applications distributed to or received from the public and no monetary disbursements may be made to or received from the public.

(b) Every licensee must either:

(1) operate at least one office in New York State for the sole purpose of handling inquiries or complaints from existing borrowers, or

(2) establish either (i) a toll-free phone number or (ii) a phone number which may be called "collect" for the purpose of enabling borrowers to made inquiries of or complaints to the licensee. Every person granted a loan must be informed, in writing, of this phone number at the time the loan is granted.

§ 407.4 **Lock box for payments**

Every licensee shall maintain a lock box in New York State where borrowers may mail payments of principal, interest or other charges. Every person granted a loan must be informed, in writing, of this at the time the loan is granted. Payments from borrowers must be credited to the borrower's account as of the day the payment is received at the lock box if this is a business day or, if received on other than a business day, payment must be credited on the first business day thereafter.

§ 407.5 **Provision in lieu of lock box**

In lieu of the lock box required to be maintained by section 407.4 of this Part, a licensee may provide in its loan agreements that the licensee shall not impose any fine, penalty or late charge in connection with any loan payment due and payable to the licensee from any borrower located in New York State if such payment is received by the licensee on or before the 10th calendar day following the due date of such payment. Any licensee discontinuing the maintenance of such lock box shall:

(a) include in all loan agreements thereafter written the provision called for by the preceding sentence; and

(b) within 30 days of the discontinuance of such lock box mail to all previous borrowers with loans outstanding in this State, notice of the availability of such "grace period" together with notice of a new address at which payment will be received.

[CHANGES ONLY TO THE HEADING. NO CHANGES TO THE TEXT OF THIS REG]

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 408
EXTENSION OF CREDIT ON A NONDISCRIMINATORY BASIS
(Statutory authority: Banking Law, § 9-d; Executive Law, § 296-a[11])

Sec.
408.1 Inquiries concerning marital history, status, and number of dependents
408.2 Statement of reasons for rejection
408.3 Attribution of past joint obligations

§ 408.1 Inquiries concerning marital history, status, and number of dependents

For purposes of Executive Law, section 296-a(1)(c), it shall not be considered an expression of limitation, specification or discrimination on the basis of sex or marital status if:

(a) a creditor requires an applicant to disclose the name or names by which he or she has previously been known, provided that this information is used solely to determine the applicant's identity and previous credit history;

(b) where application is made for a mortgage and the creditor determines that the signature of the spouse is required in order to pass clear title in the event of a default, a creditor requests information concerning marital status, provided that the information disclosed by such inquiry is used solely for the purpose of perfecting title;

(c) a creditor inquires as to the number of the applicant's dependents, provided that the information disclosed by such inquiry is used solely to determine costs and expenses payable by the applicant.

§ 408.2 Statement of reasons for rejection

For purposes of Executive Law, section 296-a(4)(a), a statement of the specific reasons for rejection of an application for credit shall be deemed to be in compliance with this section if it is a clear and meaningful statement of all of the factors which justified rejection.

§ 408.3 Attribution of past joint obligations

For purposes of Executive Law, section 296-a(4)(b), a response to a request for a separate credit history, made after July 15, 1974, shall include all obligations, whenever entered into, as to which the creditor or credit reporting bureau then has information in its files. In creating

such a separate history, all obligations on which two parties were jointly liable shall be reported as the obligation of each irrespective of the actual source of payments.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 410

MORTGAGE BANKERS: LICENSING REQUIREMENTS; MORTGAGE BROKERS: REGISTRATION REQUIREMENTS; BRANCH APPLICATIONS: NOTIFICATIONS: BOOKS AND RECORDS; ANNUAL REPORTS; SURETY BONDS; AND CONSULTANTS OF LICENSED MORTGAGE BANKERS AND REGISTERED MORTGAGE BROKERS

(Statutory authority: Banking Law, art. 12-D)

Sec.

410.1 Mortgage banking license; minimum standards
410.2 Application procedure; licenses
410.3 Mortgage broker registration; minimum standards
410.4 Application for registration
410.5 Branch application; investigation fees
410.6 Changes in officers, directors, or control of mortgage banker or mortgage broker
410.7 Books and records: annual reports
410.8 Corporate surety bonds for mortgage bankers
410.9 Deposit of assets
410.10 Deposit agreement; certificate of licensee or registrant
410.11 Assets that may be deposited
410.12 Retention of receipts or statements
410.13 Miscellaneous provisions
410.14 Corporate surety bonds for mortgage brokers
410.15 Release of corporate surety bond or deposit of assets
410.16 Application by a mortgage broker for inactive status
410.17 Consultants, employees and independent contractors of licensed mortgage bankers and registered mortgage brokers
410.18 filings

§ 410.1 Mortgage banking license; minimum standards

(a) Purpose. Section 592 of the Banking Law provides that the [superintendent] Superintendent may issue licenses to engage in the business of mortgage banking if he shall find that the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently. Certain minimum standards to be met by applicants for a mortgage banking license are set forth in this section. Nothing contained herein shall limit the [superintendent's] Superintendent's authority to consider all relevant factors in determining whether or not to approve an application, or to require information in addition to that required by the application form provided to the applicant by the department.

(b) Financial responsibility. Applicants for a license to engage in the business of making mortgage loans shall demonstrate and maintain:

(1) adjusted net worth of not less than $ 250,000

(2) an existing line of credit in an amount of not less than $ 1,000,000 provided by an unaffiliated banking institution, insurance company, or similar credit facility approved by the[superintendent] Superintendent; and

(3) a corporate surety bond issued by a bonding company or an insurance company authorized to do business in New York or pledged deposit (valued at the lower of principal amount or market) in the amount set forth in section 410.9 of this Part. Applicants shall provide the [superintendent] Superintendent with evidence of their financial responsibility and submit an affirmation which states that the applicant meets the foregoing requirements. Adjusted net worth shall consist of stockholders equity per the statement of financial condition at the end of the reporting period less the following nonacceptable assets: any asset or portion thereof pledged to secure obligations of any person or entity other than that of the mortgage banker; any asset (except construction loans receivable, secured by first mortgages, from related companies) due from officers or stockholders of the mortgage banker or related companies; that portion of any marketable security (listed or unlisted) not shown at lower of cost or market, except for any shares of FNMA stock required to be held under a servicing agreement which should be carried at cost; any amount in excess of the lower of the cost or market value of mortgages in foreclosure, construction loans, or property acquired through foreclosure; any amount shown on the balance sheet in joint ventures, subsidiaries, affiliates, and/or related companies which is greater than the value of said assets at equity; Goodwill or value placed on insurance renewals or property management contract renewals or other similar intangibles; organization costs; the value of any servicing contracts not determined in accordance with FASB 65, Accounting for Certain Mortgage Banking Activities, or subsequent revisions thereto; and "other assets," unless the financial statements are accompanied by a schedule prepared by the independent auditor or a schedule prepared by the mortgage banker and signed by an officer of the mortgage banker

(c) Business background. Applicants for a mortgage banking license shall demonstrate to the [superintendent's] Superintendent satisfaction that they have five years verifiable experience in the business of making residential mortgage loans or similar lending and credit evaluation experience or that they have engaged or shall engage in their employ one or more persons having such experience. At the [superintendent's] Superintendent sole discretion, other relevant educational or business experience may be substituted for some of the lending and credit evaluation experience described in this subdivision

(d) Community benefit. Applicants shall demonstrate to the [superintendent] Superintendent their character and fitness to operate a residential mortgage lending business in a manner which is honest, fair, efficient and free from deceptive and anticompetitive practices.

§ 410.2 Application procedure; licenses

Application for a license to engage in the business of mortgage banking shall be made in such form as may be prescribed by the Superintendent and may be obtained by written request addressed to the [Banking] Department, Attn: Mortgage Banking Division at the address set forth in section 1.1 of Supervisory Policy G 1.

(a) Fee. A completed application must be accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1.

(b) Application form. The application for licensure as a mortgage banker shall be in writing, subscribed by the applicant under penalty of perjury, and shall contain information and documents referred to in Supervisory Procedure MB 101 of this Title as well as any other information and documents deemed reasonable and necessary by the [superintendent] Superintendent.

(c) Fingerprints. The applicant shall provide a set of fingerprints in such form as shall be accepted for processing by the New York State Criminal Justice System.

(d) Background information. The applicant shall provide a report from a qualified investigatory firm detailing the personal and financial background of the applicant, or such officers or partners of the applicant as the [superintendent] Superintendent may require.

§ 410.3 Mortgage broker registration; minimum standards

(a) Purpose. Section 592-a of the Banking Law provides that the [superintendent] Superintendent may register applicants as mortgage brokers if he shall find that the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business shall be operated honestly and fairly. This section sets forth certain minimum standards to be met by applicants for registration as mortgage brokers. Nothing contained herein shall limit the [superintendent's] Superintendent's authority to consider all relevant factors in determining whether or not to approve the application or to require information in addition to that required by the application form provided to the applicant by the department.

(b) Experience and educational background. (1) Licensed real estate brokers, as defined in section 440 of the Real Property Law, who are in good standing with the Secretary of State, and attorneys-at-law shall not be required to demonstrate their experience to engage in the mortgage brokerage business.

(2) Licensed real estate salesmen, as defined in section 440 of the Real Property Law, must demonstrate two years active participation in the residential mortgage brokerage business, the nature and length of which experience shall be established by affidavit duly sworn to under penalty of perjury by the applicant.

(3) Applicants with a minimum of two years of credit analysis or underwriting experience with an exempt organization, mortgage banker, mortgage broker or licensed lender shall attach to their application a statement, verified under penalty of perjury, indicating:

(i) the specific duties and responsibilities of their employment;

(ii) the term of their employment; and

(iii) the name, address and telephone number of a business reference or a current or former supervisor.

(4) Applicants who have relevant business experience or have a relevant educational background must demonstrate that their experience or education qualifies them to be a registered mortgage broker. Such applicants shall attach to their application a statement, verified under penalty of perjury, indicating:

(i) If relevant business experience:

(a) the specific duties and responsibilities of their employment;

(b) the term of their employment; and

(c) the name, address and telephone number of a business reference or a current or former supervisor.

(ii) If relevant educational background, the specific courses taken and dates of completion.

§ 410.4 Application for registration

Applications for registration shall be made in such form as may be prescribed by the Superintendent and may be obtained by written request to the [Banking] Department, at the address set forth in section 1.1 of Supervisory Policy G 1.

(a) Fee. A completed application must be accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1.

(b) Application form. The application for registration as a mortgage broker shall be in writing, subscribed by the applicant under penalty of perjury, which shall include the information and documents referred to in Supervisory Procedure MB 102 of this Title as well as any other information and documents as the superintendent may require.

(c) Fingerprints. The applicant shall provide a set of fingerprints in such form as shall be accepted for processing by the New York State Criminal Justice System.

§ 410.5 Branch application; investigation fees

(a) A mortgage broker or mortgage banker may apply to open and maintain one or more branches. A branch may be applied for by letter application containing the information and documents set forth in a form which may be obtained from the [Banking] Department, at the address as set forth in section 1.1 of Supervisory Policy G 1 of this Title. If an application is requested in writing, the address should indicate the following: Attn: Mortgage Banking Division.

(1) An application for a branch filed by a mortgage banker shall be accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1 of this Title.

(2) An application for a branch filed by a mortgage broker shall be accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1 of this Title.

(b) In the event the [superintendent] Superintendent does not reject the application for a branch within 30 days of publication of the receipt of a completed application, the mortgage broker or mortgage banker may open the branch.

§ 410.6 Changes in officers, directors, or control of mortgage banker or mortgage broker

(a) Change in control. For purposes of this Part, a change in control shall be construed in accordance with section 594-b of the Banking Law.

(1) Minimum standards for control of a mortgage banker or a mortgage broker shall be in accordance with sections 410.1 and 410.3 of this Part, as applicable.

(2) Applications for change of control of a mortgage banker or mortgage broker shall be in writing, subscribed by the applicant under penalty of perjury, and shall contain the information and documents referred to in Supervisory Procedure MB 103 or MB 104 of this Title, as applicable, as well as any other information and documents as the [superintendent] Superintendent may require.

(b) Change in officers and directors. Every mortgage broker and mortgage banker shall within 10 days after a change of any of the directors or the three most senior executive officers or, if different, any officer(s) in charge of the New York operations of the licensed or registered entity submit to the [superintendent] Superintendent, in writing:

(1) the name, address and occupation of such new executive officer or director; and

(2) provide such other information as the [superintendent] Superintendent may require.

§ 410.7 Books and records: annual reports

(a) Each mortgage banker and mortgage broker shall keep its books and records in a manner that will allow the [superintendent] Superintendent to determine whether the mortgage banker or mortgage broker is complying with article 12-D of the Banking Law. Every mortgage banker and mortgage broker shall preserve its books and records for inspection for a minimum of three years. Every mortgage banker and mortgage broker shall establish and maintain the following:

(1) All rejected mortgage application files which shall contain all documentation relating to the applications. A list of rejected files shall be maintained and the files must be readily available upon request.

(2) A separate file for all written consumer complaints to contain the original complaint, documentation of actions taken and any related correspondence.

(3) A correspondence folder to contain all correspondence to and from the [Banking] Department, or copies thereof.

(4) A centralized application log for the principal office and all branch offices, updated daily, based on the date of receipt of the application, containing the following information:

(i) date application received;

(ii) name and address of applicant;

(iii) file number assigned;

(iv) address of property;

(v) source of application--if the source is a referral, the entry must include the name, address and a description of the entity making the referral. This information may be contained in the application log or set forth by file number or applicant name in one or more accounting records of sufficient detail;

(vi) all other fees collected and/or distributed prior to closing-- include the amount of the fee, date paid, purpose (e.g. appraisal, credit report, etc.), and the name, address and description of the entity to whom each fee is paid and/or from whom a fee is received. This information may be contained in the application log or set forth by file number or applicant name in one or more accounting records of sufficient detail; and

(vii) final disposition of the application and the date thereof. Every mortgage broker shall also establish and maintain items listed in this subdivision. In addition, the application log shall also contain the entity with which the loan was placed and the amount of fees received for mortgage brokerage service directly from the applicant and

all other sources (e.g., lenders, other brokers, etc.). Said fees shall be listed separately for each source. This information may be contained in the application log or set forth by file number or applicant name in one or more accounting records of sufficient detail.

(2) Branches must report their activity to the principal office on a daily basis not later than noon of the fifth business day after the activity takes place.

(b) Annual reports. Each mortgage banker and mortgage broker shall file an annual report with the [superintendent] Superintendent in such form as the [superintendent] Superintendent shall prescribe. The annual report shall be in writing, subscribed by the mortgage banker or mortgage broker under penalty of perjury.

(c) Ledgers. Each mortgage banker shall maintain a general ledger and such subsidiary ledgers as is necessary to accurately record all assets, liabilities, capital, income and expenses, and contingencies. Such ledgers shall be posted at least monthly. As of the end of each month a trial balance shall be prepared and kept readily available for inspection by [Banking] Department personnel. Mortgagors' escrow funds and corresponding amounts due from banks shall be set forth in the general ledger. Additionally, regular, periodic proofs shall be conducted.

(d) Financial statements. As of the end of each fiscal quarter, each mortgage banker shall have prepared an unaudited financial statement consisting of a balance sheet, income statement, and a statement of changes in net worth. Such financial statement shall be kept readily available for inspection by [Banking] Department personnel.

(e) Audited financial statement. Each mortgage banker shall have prepared an annual audited financial statement as of its fiscal year end which must be filed with the [Banking] Department within 90 days of the close of the fiscal year. The financial statement shall be prepared in accordance with generally accepted accounting principals and audited by an independent certified public accountant. Such audit shall be performed in accordance with generally accepted auditing standards and shall include a calculation of adjusted net worth as defined in section 410.1 (b) of this Part and an opinion from the accountant. Any mortgage banker which is a consolidated subsidiary may comply with this provision by annually providing a consolidated audited financial statement of its parent company and a financial statement, which may be unaudited, of the mortgage banker which is prepared in accordance with generally accepted accounting principles. Such financial statement shall include a calculation of net worth as defined in section 410.1(b) of this Part and shall be attested to by the chief executive officer or chief financial officer of the parent company.

(f) Loan files. Each mortgage banker shall maintain all documents relating to the credit, underwriting and pricing decisions of each loan file irrespective of whether the application has been denied, approved or withdrawn. Each mortgage broker shall maintain a copy of the HUD-1 in each loan file.

(g) Documentation relating to pricing and credit. Each mortgage banker shall establish and maintain the following:

(1) if overages are charged, the lending policies and procedures pertaining to the imposition of overages. For purposes of this Part, an overage is a specific amount charged to a borrower in excess of the applicable amount indicated on the regular rate sheet utilized by the lender, whether in the interest rate or in the points, which serves to increase compensation to lenders and loan officers. Such rate sheet shall be maintained and available for review by the [Banking] Department. If such rate sheet is not maintained in the loan file, then each loan file shall contain information sufficient to identify which rate sheet was utilized to price that loan;

(2) the lending policies and procedures pertaining to the charging of discount and/or origination points, if any, irrespective of whether such points reduce the interest rate; and

(3) the lending policies and procedures pertaining to the payment, if any, of premium pricing to mortgage brokers.

(h) Other required documentation relating to pricing and credit. Each mortgage banker shall establish and maintain the following documents for all loans, providing that such documents need not be maintained for federally related mortgage loan programs including, but not limited to, any loan purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, securitized by the Government National Mortgage Association or insured by the Federal Housing Administration, the Veterans' Administration or the Farmers' Home Administration or such loans that are prime no documentation/low documentation or alternative documentation loans:

(1) the lending policies and procedures pertaining to loan pricing and the conditions under which exceptions to such loan pricing policies and procedures can be made and by whom;

(2) documents reflecting pricing matrices; and

(3) documents reflecting the establishment of credit grades.

(i) Mortgage loan pipeline. With respect to mortgage loans for which a commitment has been issued but the loan has not yet closed and funded, each mortgage banker shall maintain a report or reports, updated on a monthly basis, that provides the following information, both by state and in the aggregate:

(1) total number and dollar amount of such loans;

(2) type of loan, (i.e., purchase money, refinance, etc.);

(3) total number and dollar amount of all such loans having a locked-in interest rate and total number and dollar amount of such loans whose interest rate is not locked-in; and

(4) the date the commitment was issued and any fees collected from the borrower up to the date of commitment by any party to the mortgage transaction.

Such report(s) shall be retained for one year.

(j) Mortgage loans subject to a lock-in agreement. For mortgage loans in which the loan applicant has entered into a lock-in agreement with respect to the interest rate, mortgage bankers shall maintain a report, updated monthly, regarding such loans that includes the date the interest rate was locked-in and the date and dollar amount of any fees collected by any party for the purpose of guaranteeing the lock-in rate. Such report shall be retained for one year.

(k) Lines of credit. For each line of credit, a mortgage banker shall maintain a report, or equivalent documentation, updated weekly, listing each advancement of funds from the line of credit that reflects the date of the advancement, the name of the borrower, the date that the mortgage loan closed and the date the funds were forwarded to satisfy its obligation for the advancement from the line of credit.

(l) Closing agents. Each mortgage banker shall maintain a list, by state, of the closing agents that it uses that contains, at a minimum, the name, address and telephone number of the closing agent.

(m) Quarterly reports. Within 45 days of the end of each fiscal quarter, each mortgage banker shall file:

(1) an unaudited financial statement with the department that, at a minimum, includes a balance sheet, income statement, cash flow statement, statement of adjusted net worth and dollar amount of mortgage loans for which a commitment has been issued but the loan has not yet closed. In instances where a mortgage banker has more than one affiliated company, said mortgage banker shall submit such financial statements on both a consolidated and consolidating basis;

(2) with respect to mortgage loans for which a commitment has been issued but said loan has not yet closed and funded, a quarterly report with the department that provides the number and dollar amount of such loans, the average number of days from commitment to closing and the number of loans in the quarter that did not close within said average number of days.

(n) Compliance officer. Each mortgage banker shall employ an in-house compliance officer who shall be responsible for ensuring that the mortgage banker operates its mortgage banking business in accordance with all applicable Federal and State laws and regulations. While the

compliance officer may have other job responsibilities, the mortgage banker is responsible for ensuring that the compliance officer devotes sufficient time to the compliance function responsibilities. Alternatively, the mortgage banker may retain an unaffiliated third party to provide such compliance services.

(o) FNMA or FHLMC certified lenders. Within 10 days of receipt, each mortgage banker certified by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation shall provide the department with:

(1) copies of any and all financial reporting on the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation forms;

(2) a copy of any audit letter issued on behalf of the mortgage banker in conjunction with the Uniform Single Audit Program for Mortgage Bankers and evidence of current certification by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, if applicable; and

(3) copies of any and all notices received from the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation relating to the withdrawal of said certification.

(p) Third-party audit reports. Within 10 days of receipt, each mortgage banker shall provide the department with a certified copy of any report of an audit of the mortgage banker and/or its affiliates by any lender extending a line of credit to the mortgage banker, investor, party to a loan purchase agreement, any Federal agency or government service organization.

(q) Maintenance of certain mortgage loan data. In order to allow the [superintendent] Superintendent to ensure that all mortgage bankers are conducting their residential mortgage lending business in accordance with the provisions of section 296-a of the Executive Law, each mortgage banker exempt from the mortgage data reporting requirements of section 203.3(2) of Regulation C, 12 CFR 203, issued by the Board of Governors of the Federal Reserve pursuant to the Federal Home Mortgage Disclosure Act, 12 USC* 2801, et seq., shall maintain the same data as required by Regulation C for review by the Superintendent of [Banks] Financial Services. Said data shall be compiled on an annual basis by March 1st of the following year in the manner required by Regulation C but need not be submitted to the [Banking] Department but must be available for examination for a minimum of three years. Mortgage bankers wishing to retain the above data in a form other than that required by Regulation C may apply in writing for a waiver from the Superintendent.

§ 410.8 Corporate surety bonds for mortgage bankers

(a) Every mortgage banker licensed pursuant to Banking Law, section 591 shall file with the

[superintendent] Superintendent a corporate surety bond in a principal amount of not less than $ 50,000 or more than $ 500,000 based on its volume of business. The amount of the bond required shall be as follows:

Aggregate $ amount of NY loans closed	Required amount of surety bond
$ 300,000,000 +	$ 500,000
$ 200,000,000 - $ 299,999,999	$ 350,000
$ 100,000,000 - $ 199,999,999	$ 250,000
$ 30,000,000 - $ 99,999,999	$ 150,000
$ 10,000,000 - $ 29,999,999	$ 100,000
$ 0 - $ 9,999,999	$ 50,000

The amount of the surety bond shall be determined from information submitted in the annual Volume of Operations Report ("VOOR"). The 2004 bond will be based upon the 2002 VOOR figures reported to the department. Thereafter, adjustments to the amount of the bond shall be made within 30 days after filing the applicable VOOR. Moreover, a licensed mortgage banker may submit a sworn statement indicating the aggregate dollar amount of NY loans closed during the first half of the calendar year if such amount, on an annualized basis, would change the required amount of the surety bond. Such corporate surety bond shall be issued by a bonding company or insurance company authorized to do business in this State. If the [superintendent] Superintendent determines, in his or her sole discretion, that a licensee has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the [superintendent] Superintendent may require such licensee to post a surety bond, or keep on deposit, twice the amount of such bond or deposit as is required consistent with this subdivision.

(b) Such bond shall be in favor of the [superintendent Superintendent for the protection of the [superintendent] Superintendent and residential mortgage consumers located in New York State and it shall contain substantially the following language: "In the event of the insolvency, liquidation or bankruptcy of such licensee, or the expiration, surrender or revocation of such mortgage banker's license, or where the [superintendent] Superintendent takes possession of such licensee, the proceeds of this bond shall constitute a trust fund to be used exclusively by the [superintendent] Superintendent to reimburse consumer fees or other charges determined by the [superintendent] Superintendent to be improperly charged or collected and to pay past due [Banking] Department examination costs and assessments charged to the licensee, unpaid penalties, or other obligations of the licensee. In the event of the insolvency, liquidation or bankruptcy of the mortgage banker, or the expiration, surrender or revocation of such mortgage banker's license, or where the [superintendent] Superintendent takes possession of such licensee, the proceeds of the bond shall be paid to the [superintendent] Superintendent forthwith for disposition in accordance with the applicable provisions of the Banking Law."

(c) In lieu of a corporate surety bond, the mortgage banker may elect to deposit assets pursuant to section 410.10 of this Part.

§ 410.9 Deposit of assets

Pursuant to Banking Law, section 591(4), a mortgage banker may, in lieu of filing a corporate surety bond pursuant to section 410.9 of this Part, elect to deposit assets with a value of $ 50,000 to $ 500,000, in accordance with the requirements of section 410.9, valued at the lower of principal amount or market value in a New York State chartered commercial bank, trust company, savings bank, savings and loan association, located in the State of New York. Pursuant to Banking Law section 591-a, a mortgage broker may, in lieu of filing a corporate surety bond pursuant to section 410.15 of this Part, elect to deposit assets with a value of $ 10,000 to $ 100,000, in accordance with the requirements of section 410.15, valued at the lower of principal amount or market value in a New York State chartered commercial bank, trust company, savings bank, savings and loan association located in the State of New York. No such deposit shall be made until the deposit agreement referred to in section 410.11 of this Part has been approved by the [superintendent] Superintendent.

§ 410.10 Deposit agreement; certificate of licensee or registrant

Any mortgage banker or mortgage broker, which elects to deposit assets pursuant to section 410.10 of this Part, shall execute with the depository a deposit agreement on a form obtained from the Mortgage Banking Division of the [Banking] Department or such other form as is satisfactory to the [superintendent] Superintendent. An executed copy of such deposit agreement shall be filed with the [superintendent] Superintendent. As part of this deposit agreement, the mortgage banker or mortgage broker shall agree that prior to the release or substitution of any assets subject to the deposit agreement, the mortgage banker or mortgage broker shall file a certificate with the depository which shall specify the following:

(a) the complete title of each security being withdrawn;

(b) the complete title of each security being deposited in place thereof;

(c) the interest rate, series, serial number (if any), face value maturity date, call date, principal amount and market value of each replacement security;

(d) the aggregate principal amount of all such replacement securities;

(e) the amount, if any, of the funds being withdrawn or deposited; and

(f) certify that any securities being deposited in exchange for securities being withdrawn comply as to type with the provisions of subdivision 4 of section 591 of the Banking Law, and that, after giving effect to the exchange, the aggregate amount of all securities and funds remaining on deposit by the licensed mortgage banker or registered mortgage broker, based in the case of such securities upon the principal amount or market value, whichever is lower, is at least equal to the amount required in section 410.9 of this Part for mortgage bankers, or section 410.15 of this Part for mortgage brokers. In addition, as part of this deposit agreement,

the licensee shall agree that the [superintendent] Superintendent may revoke the authority of the depository to pay dividends or interest on the securities, funds or other assets deposited pursuant to this deposit agreement.

§ 410.11 Assets that may be deposited

In addition to the assets described in sections 591(4) and 591-a(3) of the Banking law, the following assets are eligible for deposit for purposes of section 410.10 of this Part:

(a) commercial paper payable in dollars in the United States provided such paper is accorded the highest rating of a rating service designated by the [Banking Board] Superintendent pursuant to section 61.1 of this Title. In the event that an issue of commercial paper is rated by more than one designated rating service, it must have the highest rating of each;

(b) negotiable certificates of deposit that are payable in the United States and issued by an unaffiliated domestic banking institution or a domestic office of an unaffiliated foreign banking corporation;

(c) banker's acceptances that are payable in the United States and issued by an unaffiliated domestic banking institution or a domestic office of an unaffiliated foreign banking corporation; and

(d) such other assets as approved by the [superintendent] Superintendent upon written application. In determining whether to approve such other assets, the [superintendent] Superintendent shall ascertain the following as applicable:

(1) if securities, whether the securities have an independently verifiable market value of at least 110 percent of the required amount of the deposit and are traded on a recognized exchange;

(2) if bonds, whether the bonds have an investment grade rating from either Moody's Investors Services, Inc., Standard & Poor's Corporation or Fitch Investors' Service, Inc.

If the[superintendent] Superintendent determines that an asset which otherwise qualifies under subdivisions (a) through (c) of this section shall be valued for purposes of this Part at less than the amount otherwise required by this Part, the [superintendent] Superintendent shall so notify the licensee which shall thereafter value such asset for purposes of this Part as directed by the [superintendent] Superintendent.

§ 410.12 Retention of receipts or statements

Each mortgage banker and mortgage broker shall retain until completion of its next examination the originals of any and all receipts and/or statements obtained from a depository pursuant to the deposit agreement referred to in section 410.11 of this Part as well as copies of

any and all withdrawal requests and the certificate given to a depository pursuant to the deposit agreement referred to in section 410.11 of this Part.

§ 410.13 Miscellaneous provisions

(a) Reliance on written communication of department. For the purposes of the deposit agreement, the mortgage banker, mortgage broker and the depository shall accept and may rely upon, as an order of the [superintendent] Superintendent, any written communication with the seal of the department affixed thereto, and signed:

(1) by the [superintendent] Superintendent;

(2) by a deputy [superintendent] Superintendent of [banks] Financial Services;

(3) by any two employees jointly of the department whom the [superintendent] Superintendent may specifically designate in writing, to the depository, the mortgage banker or mortgage broker (whichever is the addressee of such communication).

(b) Release from compliance with terms or conditions of deposit agreement. The superintendent may by order relieve the mortgage banker, the mortgage broker or the depository from compliance with any term or condition of the deposit agreement, including any term or condition prescribed by this Part, if the [superintendent] Superintendent shall find such action necessary or proper to give effect to the purposes of sections 591(4) and 591-a(3) of the Banking Law or of this Part.

(c) Written communication to the superintendent. Written communication to the superintendent regarding this Part should be addressed to New York State [Banking] Department of Financial Services [Two Rector Street, New York, NY 10006;] Attention: Mortgage Banking Division at the address set forth in section 1.1 of Supervisory Policy G1 of this Title.

§ 410.14 Corporate surety bonds for mortgage brokers

(a) Every mortgage broker registered pursuant to Banking Law section 591-a shall file with the [superintendent] Superintendent a corporate surety bond in a principal amount of not less than $ 10,000 or more than $ 100,000 based on its number of applications. The amount of the bond required shall be as follows:

Number of New York Applications	Required Amount of Surety Bond
600+	$ 100,000

300 - 599	$ 75,000
100 - 299	$ 50,000
25 - 99	$ 25,000
0 - 24	$ 10,000

The amount of the surety bond shall be determined from information submitted in the annual Volume of Operations Report (VOOR). The 2004 bond will be based upon the 2002 VOOR figures reported to the Department. Thereafter, adjustments to the amount of the bond shall be made within 30 days after filing the applicable VOOR. Semiannually, a registered mortgage broker may submit a sworn statement indicating a change in the number of applications taken. Such corporate surety bond shall be issued by a bonding company or insurance company authorized to do business in this State. If the [superintendent] Superintendent determines, in his or her sole discretion, that a registrant has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the [superintendent] Superintendent may require such registrant to post a surety bond, or keep on deposit, twice the amount of such bond or deposit as is required consistent with this subdivision. The term "application" shall have the same meaning as that term has in section 202.2(f) of Regulation B of the Federal Reserve System (12 CFR*202), including the interpretations thereof contained in Supplement 1 to Part 202 - Official Staff Interpretations.

(b) Such bond shall be in favor of the [superintendent] Superintendent for the protection of the [superintendent] Superintendent and residential mortgage consumers located in New York State and it shall contain substantially the following language: "In the event of the insolvency, liquidation or bankruptcy of such registrant, or the expiration, surrender or revocation of such mortgage broker's registration, or where the [superintendent] Superintendent takes possession of such registrant, the proceeds of this bond shall constitute a trust fund to be used exclusively by the [superintendent] Superintendent to reimburse consumer fees or other charges determined by the [superintendent] Superintendent to be improperly charged or collected and to pay past due [Banking] Department examination costs and assessments charged to the registrant, unpaid penalties, or other obligations of the registrant. In the event of the insolvency, liquidation or bankruptcy of the mortgage broker, or the expiration, surrender or revocation of such mortgage broker's registration, or where the [superintendent] Superintendent takes possession of such registrant, the proceeds of the bond shall be paid to the [superintendent] Superintendent forthwith for disposition in accordance with the applicable provisions of the Banking Law."

(c) Mortgage brokers that have been placed on inactive status pursuant to section 410.17 of this Part need not obtain a surety bond or deposit of assets. Should the mortgage broker seek to reactivate its registration, satisfactory proof of the surety bond or deposit of assets will be required before reactivation is granted.

§ 410.15 Release of corporate surety bond or deposit of assets

If a claim is not made against the surety bond or deposit of assets held pursuant to sections 591(4) and 591-a(3) of the Banking Law within six months of the insolvency, liquidation, bankruptcy of the mortgage banker or broker, or the expiration, surrender or revocation of the mortgage banker's license or mortgage broker's registration, or where the [superintendent] Superintendent takes possession of the mortgage banker or broker, the [superintendent] Superintendent shall release any such corporate surety bond or deposit of assets. Provided that the proceeds of the bond or deposit of assets shall have been first applied to:

(a) all consumer fees determined by the [superintendent] Superintendent to be improperly charged or collected by said mortgage banker or mortgage broker; and

(b) all [Banking] Department examination costs and assessments outstanding against said mortgage banker or mortgage broker. Nothing contained herein shall prevent the [superintendent] Superintendent from continuing to retain possession of the bond or its proceeds or the deposit of assets in the event of ongoing litigation involving the mortgage banker or mortgage broker.

§ 410.16 Application by a mortgage broker for inactive status

Any mortgage broker which decides not to engage in the business of soliciting, processing, placing or negotiating mortgage loans for others, but wishes to maintain its registration as a mortgage broker may file an application to be placed on inactive status, subject to approval by the [superintendent] Superintendent. Such approval shall be granted in the sole discretion of the [superintendent] Superintendent. The application shall be in writing, subscribed by the applicant under penalty of perjury, and shall contain the information and documents referred to in Supervisory Procedure MB 105 of this Title as well as any other information and documents as the [superintendent] Superintendent may require.

§ 410.17 Consultants, employees and independent contractors of licensed mortgage bankers and registered mortgage brokers

(a) The term consultant shall mean an individual or entity involved in advising or directing management, performing management functions, or providing services to management of a licensed mortgage banker or registered mortgage broker on matters relating to the operation of the company, or an individual or entity that receives compensation, either directly or indirectly, from the licensed or registered entity, for advising potential applicants or borrowers with regard to the making of a mortgage loan. An individual or entity may be deemed a consultant regardless of whether that person or entity is receiving compensation. Consultant shall not include:

(1) an individual who is a W-2 employee of a licensee or registrant; or

(2) an individual with a professional license issued by this State or another state including, but not limited to, attorneys, accountants, real estate agents and appraisers,

provided that the services provided by such individual to the licensee or registrant are the services for which such individual has a professional license; or

(3) an individual who is employed by an entity that is regulated by any local, State or Federal regulatory agency; or

(4) any 1099 independent contractor or other outside contractor that does not provide mortgage related services.

(b) The term employee shall mean any individual performing a service for either a mortgage broker, or mortgage banker for whom such entity would be liable for withholding taxes pursuant to Title 26 of the United States Code.

(c) The term independent contractor shall mean any individual engaged in regulated activities as an independent contractor pursuant to title 26 of the United States Code on behalf of either a mortgage broker, or mortgage banker.

(d) Applicants for a license to engage in the business of mortgage banking and applicants for registration as a mortgage broker shall provide a list of its consultants at the time of application. A list of consultants must be filed with the [superintendent] Superintendent by the licensee or registrant in such form as may be prescribed within 10 days of commencement of retainment. In addition, notification of the termination of any consultant shall be made to the [superintendent] Superintendent within 10 days of such termination.

(e) An undertaking of accountability for each independent contractor must be filed with the superintendent by the licensee or registrant in such form as may be prescribed within ten days of commencement of retainment. In addition, notification of the termination of any independent contractor shall be made to the [superintendent] Superintendent within 10 days of such termination.

§ 410.18 Filings

All filings under this Part may be submitted electronically in a format acceptable to the Superintendent.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 412

DISSOLUTION OF FUND CREATED UNDER ARTICLE VI-B

(Statutory authority: Banking Law, § 284)

Sec.
412.1 Prupose
412.2 General provisions
412.3 Liquidation
412.4 Certification

§ 412.1 Purpose

This regulation is promulgated under the authority of Banking Law, section 284 and in accordance with the provisions of section 2, article V of the Agreement for the Establishment of the Fund for Savings Bank dated January 20, 1965.

§ 412.2 General provisions

The Fund for Savings Banks was created pursuant to article VI-B of the Banking Law and in accordance with a written agreement entitled "Agreement for the Establishment of the Fund for Savings Bank," pursuant to article VI-B of the Banking Law, dated January 20, 1965. The agreement was approved by the [superintendent] Superintendent on February 11, 1965. The fund then entered into a written agreement dated March 31, 1965 with a savings bank pursuant to which the members of the fund, by and through the fund, contributed capital to the initial surplus fund of a savings bank. The aforesaid contribution was evidenced by a written instrument held by the fund known as a "Transferable Certificate." On November 18, 1986 the said transferable certificate was redeemed and cancelled by the payment from the savings bank representing full payment of principal and interest to the date of payment.

§ 412.3 Liquidation

The Fund for Savings Banks may be liquidated upon occurrence of:

(a) the affirmative vote to liquidate, taken at a regular or a special meeting, of not less than 75 percent of total number of member banks representing not less than 66 2/3 percent of the

total outstanding deposit liabilities of all the member banks;

(b) the payment of all liabilities incurred or assumed by the fund under the provisions of the agreement and article VI-B of the Banking Law; and

(c) the distribution of the balance thereof to the members pro rata according to their contribution under Banking Law, section 284 and in accordance with article V, section 2 of the agreement.

§ 412.4 Certification

The secretary of the fund shall certify to the [superintendent] that the events referred to in section 412.3 of this Part have taken place. Thereafter, upon the filing of the [superintendent's] Superintendent's approval thereof in the office of the [superintendent] Superintendent, the fund shall be dissolved.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 413

PROCEDURES AND REQUIREMENTS FOR MORTGAGE BROKERS TO ACT AS FHA MORTGAGE LOAN CORRESPONDENTS

[Statutory authority: Banking Law, § 590[5-a])

Sec.
413.1 Authorization to act as an FHA mortgage loan correspondent
413.2 Definitions
413.3 Minimum standards required for approval
413.4 Application procedures for mortgage brokers to obtain the approval of the Superintendent to make FHA insured mortgage loans
413.5 Approval or denial of applications to make FHA insured mortgage loans
413.6 Duties of a mortgage broker approved to act as an FHA mortgage loan correspondent
413.7 Duties of a sponsor
413.8 Suspension or termination of approval to act as an FHA mortgage loan correspondent

§ 413.1 Authorization to act as an FHA mortgage loan correspondent

Section 590(5-a) of the Banking Law and this Part constitute the exclusive authority for mortgage brokers registered pursuant to Article 12-D of the Banking Law to act as FHA Mortgage Loan Correspondents. Nothing in this Part shall prohibit mortgage bankers licensed pursuant to Article 12-D of the Banking Law and exempt organizations from acting as FHA Mortgage Loan Correspondents.

§ 413.2 Definitions

For purposes of this Part:

(a) The term *mortgage banker* shall mean a mortgage banker as defined in section 590(1)(f) of

the Banking Law.

(b) The term *mortgage broker* shall mean a mortgage broker as defined in section 590(1)(g) of the Banking Law.

(c) The term *exempt organization* shall mean an exempt organization as defined in section 39.2 of this Title.

(d) The term FHA mortgage loan correspondent shall mean a mortgagee approved by the Secretary of Housing and Urban Development which either: (i) has as its principal activity the origination of mortgages for sale or transfer to a sponsor or sponsors; or (ii) satisfies the definition of a supervised mortgagee contained in the regulations promulgated by the Secretary of the Department of Housing and Urban Development.

(e) The term sponsor shall mean a mortgagee which holds a valid approval agreement, is approved to participate in the FHA direct endorsement program, and satisfies the sponsor net worth requirements contained in the regulations promulgated by the Secretary of the Department of Housing and Urban Development.

(f) The term HUD shall mean the Department of Housing and Urban Development.

(g) The term FHA shall mean Federal Housing Administration.

(h) The term FHA insured mortgage loan shall mean a loan made through an approved lender and insured by the Federal Housing Administration.

§ 413.3 Minimum standards required for approval

(a) For purposes of this Part, in addition to any other requirements of New York or federal law, an applicant must satisfy the following requirements before obtaining approval from the Superintendent to make FHA insured mortgage loans:

(1) be a registered mortgage broker in good standing in New York State;

(2) comply with all federal requirements to act as an FHA mortgage loan correspondent as promulgated by the Secretary of the Department of Housing and Urban Development;

(3) irrespective of any law or regulation to the contrary, have a minimum adjusted net worth of $ 50,000;

(4) file with the [superintendent] Superintendent an audited financial statement for its latest fiscal year end;

(5) file with the [superintendent] Superintendent, in addition to any bond required under Section 410.14 or otherwise by law or regulation, a corporate surety bond in the principal amount of $ 25,000, which shall be issued by a bonding company or insurance company authorized to do business in this State and which shall comply with the requirements set forth in subdivision (b) of this section. In lieu of a corporate surety bond, the applicant may elect to deposit $ 25,000 in assets pursuant to subdivision (c) of this section.

(6) obtain a written agreement with one or more federally approved sponsors. Such sponsors must be satisfactory to the Superintendent; and

(7) have a satisfactory supervisory and consumer complaint record.

(b) The form of the surety bond shall be obtained from [the] Mortgage Banking Division of the [Banking] Department or such other form as is satisfactory to the [superintendent] Superintendent. Such bond shall be in favor of the [superintendent] Superintendent for the protection of the [superintendent] Superintendent and residential mortgage consumers located in New York State and shall contain substantially the following language:

"The proceeds of this bond shall constitute a trust fund to be used exclusively by the Superintendent to reimburse consumer fees determined by the Superintendent to be improperly charged or collected and to pay [banking] department examination costs and assessments, solely in the event of the insolvency, liquidation or bankruptcy of such mortgage broker or the surrender, expiration or revocation of such mortgage broker's registration or approval to make loans as an FHA Mortgage Loan Correspondent. In the event of the insolvency or bankruptcy of the mortgage broker, the proceeds of the bond shall be paid to the Superintendent forthwith for disposition in accordance with the applicable provisions of the Banking Law."

(c) The form of the deposit agreement shall be obtained from [the] Mortgage Banking Division of the [Banking] Department or such other form as is satisfactory to the [superintendent] Superintendent. The deposit agreement shall be for the protection of the [superintendent} Superintendent and residential mortgage consumers located in New York State. An executed copy of such deposit agreement shall be filed with the [superintendent} Superintendent. The assets which comprise the deposit shall be valued at the lower of principal amount or market

value and must be deposited in a New York State chartered commercial bank, trust company, savings bank, savings and loan association, private banker or national bank, federal savings bank or federal savings and loan association located in New York State. As part of the deposit agreement, the applicant shall agree that prior to the release or substitution of any assets subject to the deposit agreement, the applicant shall file a certificate with the depository which shall specify the following:

(1) the complete title of each security being withdrawn;

(2) the complete title of each security being deposited in place thereof;

(3) the interest rate, series, serial number (if any), face value maturity date, call date, principal amount and market value of each replacement security;

(4) the aggregate principal amount of all such replacement securities;

(5) the amount, if any, of the funds being withdrawn or deposited; and

(6) certify that any securities being deposited in exchange for securities being withdrawn comply as to type with the provisions of subdivision 4 of section 591 of the Banking Law, and that, after giving effect to the exchange, the aggregate amount of all securities and funds remaining on deposit by the applicant, based in the case of securities upon the principal amount or market value, whichever is lower, is at least equal to $ 25,000.

In addition, as part of the deposit agreement, the applicant shall agree that the [superintendent] Superintendent may revoke the authority of the depository to pay dividends or interest on the securities, funds or other assets deposited pursuant to this deposit agreement.

(d) The [superintendent] Superintendent, in his or her sole discretion, may withdraw approval as to one or more sponsors at any time should the [superintendent] Superintendent determine that the sponsor's funding capability, financial standing, character and fitness, and/or supervisory or consumer complaint record is such as to give the [superintendent] Superintendent reasonable cause to doubt the ability of such sponsor to meet its obligations to the Loan Correspondent. Notification of any such disapproval will be sent in writing to the Loan Correspondent. Within five (5) business days from receipt of such notification, the Loan Correspondent shall cease doing business with the sponsor.

(e) Paragraph 413.3(a)(5) and subdivisions 413.3(b) and 413.3(c) of this Part shall remain in full force and effect until twenty-four months from the effective date of this Part provided that the Superintendent of Banks shall monitor the effects of the operation of such paragraph and

subdivisions and shall submit to the Governor's Office of Regulatory Reform a report after this Part shall have been in effect for 22 months. This report shall include findings on the effects of the operation of such paragraph and subdivisions and, in addition, shall contain recommendations regarding the extension or re-adoption of such paragraph and subdivisions. Specifically, such report shall include the following information:

(1) the number of loan correspondents in New York State;

(2) the number of loan correspondents which have:

(i) become insolvent or bankrupt;

(ii) had their approval to make loans as an FHA Mortgage Loan Correspondent terminated; or

(iii) had their mortgage broker's registration terminated either by surrender, expiration or revocation; and

(3) the number of instances in which a claim was presented against the bond or pledged deposit, the dollar amount of each claim and the number of claims which were successful or which remain unresolved.

§ 413.4 Application procedures for mortgage brokers to obtain the approval of the [superintendent] Superintendent **to make FHA insured mortgage loans**

Such application procedures are set forth in [Banking] Department Supervisory Procedure MB 106.

§ 413.5 Approval or denial of applications to make FHA insured mortgage loans

(a) Upon approval of an application to make FHA insured mortgage loans, the [superintendent] Superintendent shall issue a Certificate stating that the mortgage broker may act as an FHA Mortgage Loan Correspondent and may make FHA insured mortgage loans in this state.

(b) Upon denial of an application to make FHA insured mortgage loans, the [superintendent] Superintendent shall so inform the applicant in writing. The [superintendent] Superintendent may deny the application for any of the following reasons:

(1) the applicant fails to meet the minimum standards set forth in section 413.3 of this Part;

(2) the applicant fails to submit a complete application or any additional documentation reasonably requested by the [superintendent] Superintendent;

(3) the applicant has a supervisory and/or consumer complaint record which warrants the belief that the public interest would not be served by approving such application; and

(4) the [superintendent] Superintendent does not approve of at least one of the sponsors which has entered into a written agreement with the applicant to fund its FHA insured mortgage loans in which case the applicant shall have thirty days in which to submit a new sponsor to the [superintendent] Superintendent for approval.

§ 413.6 Duties of a mortgage broker approved to act as an FHA mortgage loan correspondent

A registered mortgage broker which has been approved by the [superintendent Superintendent to act as an FHA mortgage loan correspondent shall:

(a) within forty-eight (48) hours after entering into a loan correspondent agreement with any sponsor, notify the [superintendent] Superintendent in writing of its entering into any such agreement;

(b) within forty-eight (48) hours after termination, notify the [superintendent] Superintendent in writing of the termination of any loan correspondent agreement whether such agreement is terminated by the broker or by the sponsor;

(c) within forty-eight (48) hours after suspension, withdrawal or surrender, notify the [superintendent] Superintendent in writing if its HUD approval to act as an FHA mortgage loan correspondent has been suspended, withdrawn or surrendered;

(d) simultaneously with the issuance by the loan correspondent of an interest rate lock-in agreement or commitment to fund, whichever occurs first, notify consumers in writing of the name and address of the sponsor;

(e) within seventy-two (72) hours after learning of any change in the sponsor, notify consumers in writing of such change;

(f) submit a report semi-annually to the [superintendent] Superintendent. This report shall set forth the required information by sponsor for each calendar month of the period covered. The required information shall consist of the number and dollar amount of FHA loans made and the average rate and points charged; and

(g) within ninety (90) days of its fiscal year end, submit to the [superintendent] Superintendent a copy of its annual certified audit report required by HUD.

§ 413.7 Duties of a sponsor

A licensed mortgage banker or exempt organization acting as a sponsor for an approved FHA mortgage loan correspondent shall:

(a) upon completion of its underwriting process, issue a written approval or denial of the mortgage loan to the FHA mortgage loan correspondent;

(b) whenever it approves an interest rate lock-in and/or commitment of a mortgage loan, issue a written confirmation to the FHA mortgage loan correspondent; and

(c) within forty-eight (48) hours after termination, notify the Superintendent in writing when an agreement to act as the sponsor for an FHA mortgage loan correspondent has been terminated. Such written notice shall include:

(1) specific reason(s) for the termination of its agreement to fund all FHA insured mortgages for the mortgage loan correspondent;

(2) a list of the outstanding loan commitments and interest rate lockin agreements which the sponsor has approved on behalf of the FHA mortgage loan correspondent; and

(3) a list of any such interest rate lock-in agreements and loan commitments which the sponsor does not intend to honor and the reason(s) for this decision.

§ 413.8 Suspension or termination of approval to act as an FHA mortgage loan correspondent

(a) The [superintendent] Superintendent may suspend for sixty days the approval of a registered mortgage broker to act as an FHA mortgage loan correspondent if at any time he or she shall disapprove the sole sponsor or if the sole sponsor shall terminate its agreement with

the FHA mortgage loan correspondent during which time the loan correspondent shall submit a new sponsor to the [superintendent] Superintendent for approval.

(b) The [superintendent] Superintendent may terminate the approval of a registered mortgage broker to act as an FHA mortgage loan correspondent if at any time:

(1) the sixty day suspension set forth in subdivision (a) of this section has expired without the loan correspondent having obtained approval from the Superintendent for a new sponsor;

(2) the FHA mortgage loan correspondent fails to be in compliance with this Part or with any other law or regulation administered by the [superintendent] Superintendent to which it is subject; or

(3) the FHA mortgage loan correspondent fails to remain in good standing with the Secretary of HUD.

(c) Within seventy-two (72) hours after receipt of written notice from the [superintendent] Superintendent of the termination of approval to act as an FHA mortgage loan correspondent, the mortgage broker shall return the certificate of registration indicating its authority to act as an FHA mortgage loan correspondent. Upon return of the certificate, the Superintendent shall issue a standard mortgage broker certificate of registration.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 416

ANTI-MONEY LAUNDERING PROGRAMS FOR APPLICATIONS FOR LICENSES, BRANCHES AND ACQUISITIONS NY LICENSED CHECK CASHERS AND LICENSED MONEY TRANSMITTERS

(Statutory authority: Banking Law, §10,39,44,367,369,370,371,370-a,641,646,649,652-a)

Sec.
416.1 Anti-money laundering programs
416.2 License applications
416.3 Branching applications
416.4 Acquisitions applications
416.5 Waivers

§ 416.1 Anti-money laundering programs

This Part is issued to assure ongoing compliance with the existing practice of the Superintendent [of Banks (the "Superintendent")] to require each applicant for a licensed check casher license or licensed money transmitter license (each a "Licensee"), a branch office of a Licensee or for approval to acquire Licensee to demonstrate an anti-money laundering program that complies with applicable federal anti-money laundering laws (31 U.S.C. Chapter 53, subchapter II)* and regulations promulgated by the United States Department of the Treasury (31 CFR part 103.125)* (hereinafter, referred to as "31 CFR 103"). In addition, the Superintendent seeks to assure compliance with applicable regulations of the Office of Foreign Asset Control regulations issued by the United States Department of the Treasury ("OFAC") (31 CFR part 500 et. seq.)*.

(a) Each applicant shall demonstrate that it has, or on the effective date of the transaction that is the subject of the application, will have, an anti-money laundering program that complies with the applicable federal anti-money laundering laws and regulations referred to in this section 416.1.

(b) For purposes of this Part, the required anti-money laundering program shall, at a minimum:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with 31 CFR 103, including:

(i) Policies, procedures, internal controls developed and implemented under this section shall include provisions for complying with the requirements of 31 CFR 103 including, to the extent applicable to the Licensee, requirements for:

(A) Verifying customer identification;

(B) Filing reports;

(C) Creating and retaining records; and

(D) Responding to law enforcement requests.

(ii) A Licensee that has an automated data processing system should integrate its compliance procedures with such systems

(2) Designate a person to assure day to day compliance with the program and 31 CFR 103. The responsibilities of such person shall include assuring that:

(i) Each Licensee properly files reports, and creates and retains records, in accordance with applicable requirements of 31 CFR Part 103;

(ii) The compliance program is updated as necessary to reflect current requirements of 31 CFR Part 103, and related guidance issued by the Department of the Treasury; and

(iii) Each Licensee provides appropriate training and education in accordance with 31 CFR Part 103.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the entity is required to report such transactions under applicable federal law and regulations; and

(4) Provide for independent review to monitor and maintain an adequate program.

(c) The anti-money laundering program shall be in writing and each Licensee shall make copies of the anti-money laundering program available for inspection by the Superintendent as appropriate.

(d) Each Licensee will further be required to demonstrate that it has, or on the effective date of the transaction that is the subject of the application, will have, risk-based policies, procedures and practices to ensure, to the maximum extent practicable, that its transactions comply with OFAC requirements.

(e) Compliance with applicable federal requirements shall constitute compliance with the provision of this Part.

§ 416.2 License applications

All applications submitted for prior approval of the [superintendent] Superintendent to become a Licensed Check Casher or Licensed Money Transmitter shall be accompanied by information demonstrating that the applicant will maintain an anti-money laundering program that satisfies the requirements set forth in section 416.1.

§ 416.3 Branching applications

All applications submitted for the prior approval of the [superintendent] Superintendent to establish a branch or branches by any Licensed Check Casher shall be accompanied by information demonstrating that the applicant has or will have an anti-money laundering program that satisfies the requirements set forth in section 416.1.

§ 416.4 Acquisition applications

All applications submitted for the prior approval of the [superintendent] Superintendent to merge with, purchase and/or assume, or acquire control (as defined in the applicable provisions of the Banking Law) of, any Licensed Check Casher or Licensed Money Transmitter shall in every case be accompanied by information demonstrating compliance with, or a plan that would comply with the requirements set forth in section 416.1.

§ 416.5 Waivers

In considering an application subject to this Part, the [superintendent] Superintendent may determine, for good cause shown, that the lack of compliance with any of the requirements of this Part does not necessarily preclude approval of the application.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 417

MAINTENANCE OF ANTI-MONEY LAUNDERING COMPLIANCE PROGRAMS BY LICENSED CHECK CASHERS AND LICENSED MONEY TRANSMITTERS

(Statutory authority: Banking Law, §10,37(3),39,44,371,646,649)

Sec.
417.1 Covered entities
417.2 Anti-money laundering programs

§ 417.1 Covered entities

This Part shall apply to all Licensed Check Cashers and Licensed Transmitters of Money (each a "Licensee").

§ 417.2 Anti-money laundering programs

Each Licensee, in order to guard against money laundering through their businesses, shall establish and maintain an anti-money laundering program that complies with applicable federal anti-money laundering law (31 U.S.C. Chapter 53, subchapter II)*, including the obligation to file Suspicious Activity Reports ("SARS")(31 U.S.C. § 5318(g)*, and regulations promulgated by the Department of Treasury (31 CFR part 103.125)* (hereinafter referred to as "31 CFR Part 103"), and, when ordered, such entities shall provide within 30 days a written report to the Superintendent [of Banks (the "Superintendent")] detailing the extent to which each such institution has established such a program. In addition, the [superintendent] Superintendent seeks to assure compliance with applicable regulations of the Office of Foreign Assets Control promulgated by the United States Department of the Treasury (31 CFR part 500 et. seq.)*.

(a) For purposes of this Part, the required anti-money laundering program shall, at a minimum:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this 31 CFR Part 103, including:

(i) Policies, procedures, internal controls developed and implemented under this section shall include provisions for complying with the requirements of 31 CFR Part 103 including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification;
(B) Filing reports;
(C) Creating and retaining records; and
(D) Responding to law enforcement requests.

(ii) Every Licensee that has an automated data processing system should integrate its compliance procedures with such systems.

(2) Designate a person to assure day to day compliance with the program and 31 CFR Part 103. The responsibilities of such person shall include assuring that

(i) The Licensee properly files reports, and creates and retains records, in accordance with applicable requirements of 31 CFR Part 103;
(ii) The compliance program is updated as necessary to reflect current requirements of 31 CFR Part 103, and related guidance issued by the Department of the Treasury; and
(iii) The Licensee provides appropriate training and education in accordance with 31 CFR Part 103.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the entity is required to report such transactions under applicable federal law and regulations; and

(4) Provide for independent review to monitor and maintain an adequate program.
(b) The anti-money laundering program shall be in writing and each Licensee shall make copies of the anti-money laundering program available for inspection as appropriate by the [superintendent] Superintendent.

(c) Each Licensee will further be required to demonstrate that it has in place risk-based policies, procedures and practices to ensure, to the maximum extent practicable, that its transactions comply with OFAC requirements.

(d) Every Licensee shall file SARS in accordance with applicable federal law and regulations.

(e) Compliance with applicable federal requirements shall constitute compliance with the provisions of this Part.

§ 417.3 Additional Reports

Each licensee shall provide such additional reports regarding its compliance with this Part as shall be directed by the superintendent.

[Changes only to heading. No changes to text necessary – updated through the Emergency Adoption Process]

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 418

SERVICING MORTGAGE LOANS: REGISTRATION REQUIREMENTS; FINANCIAL RESPONSIBILITY REQUIREMENTS

418.1 Scope and application of this Part
418.2 Mortgage Loan Servicer registration; exemptions
418.3 Definitions
418.4 Application for registration
418.5 Branch application and fees
418.6 Calculation and collection of fees
418.7 Approval or denial of application
418.8 Changes in directors, officers or control of Mortgage Loan Servicer
418.9 Revocation, suspension, termination and surrender of registration
418.10 Fines and penalties
418.11 Business background and character and fitness requirements for Mortgage Loan Servicer registration
418.12 Financial responsibility requirements for registered Mortgage Loan Servicers and Applicants other than insured depository institutions covered by Part 418,13
418.13 Financial responsibility requirements for insured depository institutions
418.14 Transitional period

§418.1 Scope and application of this Part

Article 12-D of the Banking Law requires certain Persons (certain terms in this Part are defined in Section 418.3 below) engaged in the business of Servicing Mortgage Loans to register with the Superintendent . Sections 418.2 to 418.11 of this Part 418 implement such registration requirements. Article 12-D of the Banking Law also provides exemptions from such registration requirements for certain Exempted Persons, provided that such Persons notify the Superintendent that they are Servicing Mortgage Loans in this state and comply with any

regulations applicable to Persons so engaged. Sections 418.12 and 418.13 of this Part 418 set forth financial responsibility requirements that are applicable to applicants for Mortgage Loan Servicer registration as well as to both registered and Exempt Persons engaged in Servicing Mortgage Loans in this state.

§418.2 Mortgage Loan Servicer registration; exemptions.

Section 590(2)(b-1) of the Banking Law provides that no person, partnership, association, corporation or other entity shall engage in the business of Servicing Mortgage Loans with respect to any property located in this state without first being registered with the Superintendent as a Mortgage Loan Servicer. A person servicing mortgage loans made under the Power New York Act of 2011 (Chapter 388 of the Laws of 2011) shall not thereby be deemed to be engaged in the business of servicing mortgage loans**.**

All servicers, including Third-Party Servicers, engaged directly or indirectly in Servicing Mortgage Loans, are required to register hereunder. When a mortgage loan servicer delegates servicing of one or more mortgage loans to another servicer without transferring ownership of the mortgage servicing rights, it remains obligated to comply with all requirements of this Part with respect to the servicing of such loan mortgage loan(s). The sub-servicer likewise remains responsible under this Part.

The registration provisions of this Part shall not apply to the following Persons, provided that each such Person notifies the Superintendent that it is Servicing Mortgage Loans in this state and complies with the regulations applicable to Mortgage Loan Servicers (other than those regarding registration):

(a) *Exempt Organization*. Any insurance company, banking organization, foreign banking corporation licensed by the Superintendent or the Comptroller of the Currency to transact business in this state, national bank, federal savings bank, federal savings and loan association, federal credit union, or any bank, trust company, savings bank, savings and loan association, or credit union organized under the laws of any other state, or any instrumentality created by the United States or any state with the power to make Mortgage Loans.

(b) *Mortgage Banker*. Any Person licensed pursuant to Section 592 of the Banking Law to engage in the business of making Mortgage Loans.

(c) *Mortgage Broker*. Any Person registered pursuant to Section 592-a of the Banking Law to engage in the business of soliciting, processing, placing or negotiating Mortgage Loans for others, or offering to solicit, process, place or negotiate Mortgage Loans for others.

(d) *Assisting in incidental activities*. No Person shall be subject to the registration provisions of this Part if he or she is employed by an Exempt Organization, a Mortgage Banker or Mortgage Broker, or a Mortgage Loan Servicer to assist in the servicing of Mortgage Loans for such

employer. The preceding sentence shall not affect the obligation of any Person to be licensed as a mortgage loan originator when required under Article 12-E of the Banking Law.

(e) *Exemptions approved by the Superintendent*. Other Persons may be exempted with the prior written approval of the Superintendent for good cause.

§418.3 Definitions.

For purposes of this Part:

(a) *"Exempted Person"* means a Person, partnership, association, trust, corporation or other entity engaged in the business of Servicing Mortgage Loans with respect to any property located in this state to which the registration requirement in Section 590(2)(b-1) of the Banking Law does not apply.

(b) "*Mortgage Loan*" means a loan to a natural person made primarily for personal, family or household use, secured by a mortgage or other consensual security interest on residential real property or certificates of stock or other evidence of ownership interests in, and a proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of residential real property and, if determined by regulation, shall include such a loan secured by a security interest on a manufactured home.

(c) "*Mortgage Loan Servicer*", "*Servicer*", or "*MLS*" means a Person registered or required to be registered pursuant to Banking Law Section 590(2)(b-1) to engage in the business of Servicing Mortgage Loans for property located in this state, or a Person exempted from such registration requirement.

(d) "*Servicing Mortgage Loans*" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any Mortgage Loan, including amounts for escrow accounts under Section 6-k of the Banking Law, Title 3-A of Article IX of the Real Property Tax Law or section 10 of 12 U.S.C. 2609, and making payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in Section 6-h of the Banking Law, Sections 280 and 280-a of the Real Property Law or 24 CFR 3500.2, servicing includes making payments to the borrower. The term includes a Person who makes or holds a Mortgage Loan if such Person also directly or indirectly is the holder of the mortgage servicing rights or has been delegated servicing functions for the Mortgage Loan.

(e) "*Person*" means any individual or legal entity, including any corporation, partnership, association or limited liability company.

(f) "*Residential real property*" means real property located in this state improved by a one-to-four family residence or residential unit in a building used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more Persons, but shall not refer to unimproved real property upon which such dwellings are to be constructed.

(g) “Third-party servicer” means, with respect to particular mortgage loans, a Servicer that does not own such mortgage loans or the servicing rights thereto but only performs servicing or sub-servicing for the owner of such loans or servicing rights or another Third-party servicer, provided that for a Person to be deemed to be a Third-party servicer, the owner of the servicing rights must remain responsible for all advance and repurchase obligations related to the servicing.

§418.4 Application for registration.

(a) *General.* Applications for registration shall be made in such form as may be prescribed by the Superintendent. Instructions for submission of applications are available on the Department’s website as set forth in section 1.1 of Supervisory Policy G 1 and may also be obtained by written request to the Department, at the address set forth in section 1.1 of Supervisory Policy G 1 or the address set forth in Supervisory Procedure MB 109.

(b) *Fee.* A completed application must be accompanied by payment of a non-refundable application fee. The amount of such fee is $3,000, as provided in section 18-a of the Banking Law.

(c) *Signature; Information required.* The application for registration as an MLS shall be executed by the applicant under penalty of perjury and shall include the information and documents referred to in Supervisory Procedure MB 109 as well as any other information and documents as the Superintendent may require to assist in reviewing the application.

(d) *Fingerprints*. The applicant shall provide fingerprint cards and pay any related fees as specified in Supervisory Procedure MB 109 for such officers and other control Persons of the MLS as shall be required by the Superintendent.

§418.5 Branch application and fees.

(a) An MLS may apply to open and maintain one or more branches. A branch may be applied for by application containing the information and documents set forth in an application form prescribed by the Superintendent. Instructions for submission of applications are available on the Department’s website as set forth in section 1.1 of Supervisory Policy G 1 and may be obtained from the Department as set forth above. If an application is requested in writing, the address should indicate the following: Attn: Mortgage Banking Division.

(b) An application for branch office filed by an MLS shall be accompanied by payment of the fee, if any, specified in section 18-a of the Banking Law.

(c) In the event the Superintendent does not reject or deny the application for a branch within 60 days of publication in the **Weekly Bulletin** of the Department of the receipt of a completed application, the MLS may open the branch.

§418.6 Calculation and collection of fees.

(a) *Payment of fees*. An application to become a registered MLS and any other application by an MLS for an approval of the Superintendent required under Article 12-D of the Banking Law shall be accompanied by payment of the appropriate fee, if any, as set forth in Section 18-a of the Banking Law. In addition to the amount prescribed by Section 418.4(b), such fees may include any processing fee charged by the Nationwide Mortgage Licensing System and Registry ("NMLSR") (or any other entity with which the Superintendent has entered into a written contract or memorandum of understanding to process applications and other submissions relating to mortgage loan servicing) and fingerprint processing fees collected by the State Division of Criminal Justice and/or the NMLSR. Such fees are nonrefundable.

(b) *Fee amount*. The schedule of fees in effect from time to time shall be posted on the Department's website, as set forth in section 1.1 of Supervisory Policy G 1

§418.7 Approval or denial of application

(a) *Approval of application.* If the Superintendent shall find that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant is a co-partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of Article 12-D of the Banking Law, the Superintendent shall thereupon in accordance with paragraph (c) below approve the application, register the applicant as a Mortgage Loan Servicer on a list maintained for that purpose at the Department and shall issue a certificate to the registrant attesting to such registration.

(b) *Grounds for refusal*. The Superintendent may refuse to register the applicant as a Mortgage Loan Servicer upon any ground on which the Superintendent could refuse to license the applicant as a mortgage banker under section 592 of the Banking Law or register the applicant as a mortgage broker under section 592-a of the Banking Law.

(c) *Notice of approval.* Upon registering any applicant as an MLS, the Superintendent shall transmit notice of approval of the application, including the certificate described in (a) above, in such form as the Superintendent deems appropriate, to the MLS.

(d) *List of registrants.* The Superintendent shall maintain upon the Department's website a list of registered Mortgage Loan Servicers. The list shall indicate the following:

1. Name of each MLS; and

2. The location of the principal office of such MLS.

(e) *Registration certificate; Change of location*. Each registration certificate issued under this regulation shall state the address or addresses at which the business is to be conducted, including any branches thereof, and shall state the full name of the registrant. The registrant shall notify the Superintendent in writing at least 30 days prior to changing the location of the principal office at which the business of the registrant is to be conducted.

(f) *Registration not transferrable*. A registration issued pursuant to this Part is not transferable or assignable.

(g) *Notification of denial.* If the Superintendent shall not make the finding required for registration as an MLS under this section, the Superintendent shall notify, in writing, the applicant that the application was denied and that the applicant shall not engage in the business of servicing Mortgage Loans in this state.

§418.8 Changes in directors, officers or control of Mortgage Loan Servicer.

(a) *Change in control.* It shall be unlawful except with the prior approval of the Superintendent for any action to be taken which results in a change of control of the business of a Mortgage Loan Servicer.

1. For purposes of this Part, a "change in control" shall have the same meaning with respect to an MLS that it has for a Mortgage Banker or Mortgage Broker under section 594-b of the Banking Law.
2. For a period of six months from the date of qualification of a legal representative, and for such additional period of time as the Superintendent may prescribe, in writing, the provisions of this Section 418.7 shall not apply to a transfer of control by operation of law to the legal representative, as defined in Section 594-b(3) of the Banking Law, of one who has control of a Mortgage Loan Servicer.
3. Approval of a change of control of a Mortgage Loan Servicer shall be governed by the same standards as an applicant for registration as an MLS under sections 418.2 and 418. 7 of this Part, as applicable.
4. Each application for change of control of a Mortgage Loan Servicer shall be subscribed by the applicant under penalty of perjury and shall contain the information and documents referred to in Supervisory Procedure MB 110, as well as any other information and documents as the Superintendent may require to assist in reviewing the application.
5. Fee. A completed application must be accompanied by payment of a non-refundable application fee. The amount of such fee is $3,000, as provided in section 18-a of the Banking Law.

(b) *Change in officers and directors*. Every Mortgage Loan Servicer shall within 10 days after a change of any of the directors or the three most senior executive officers or, if different, any officer(s) in charge of the New York operations of the Servicer, submit to the Superintendent, in writing:

1. The name, address and occupation of such new executive officer or director; and
2. Such other information as the Superintendent may require to assist in reviewing the application.

§418.9 Revocation, suspension, termination and surrender of registration.

(a) *Grounds for revocation*. The Superintendent may revoke any registration to engage in the business of servicing mortgage loans issued pursuant to this Part if he or she shall find that:

1. The MLS has violated any applicable provision of Article 12-D of the Banking Law, any applicable rule or regulation promulgated under Article 12-D of the Banking Law or any other law, rule or regulation of New York State or the federal government pertaining to Servicing Mortgage Loans;
2. Any fact or condition exists which, if it had existed at the time of the original application for such registration, would have warranted the Superintendent in refusing originally to issue such registration; or
3. The MLS has committed a crime under the laws of New York or any other state or of the United States involving moral turpitude or fraudulent or dishonest dealing, or a final judgment has been entered against the MLS in a civil action on grounds of fraud, misrepresentation or deceit.

(b) *Suspension without hearing; termination*.

1. The Superintendent may, without notice or a hearing, for good cause or where there is a substantial risk of public harm, issue an order suspending any registration or delete the name of any registrant for a period not exceeding thirty days, pending investigation. ''Good cause'', as used in this subdivision, shall exist when the registrant has defaulted or is likely to default in performing its financial engagements or engages in dishonest or inequitable practices which may cause substantial harm to the Persons afforded the protection of article 12-D of the Banking Law.
2. Any mortgage servicing registration may be suspended by order of the Superintendent, without notice or a hearing, upon the registrant's failure to pay the required assessment charged pursuant to Section 17 of the Banking Law upon the date or dates such payment or payments are due. Such registration shall be reinstated if the registrant pays such assessment charged and any applicable late fees.
3. The Superintendent, in his or her sole discretion, without notice or a hearing, may issue an order suspending any registration issued pursuant to this Part: (i) thirty days after

the date the registrant fails to file any report required to be filed by it with the Superintendent pursuant to the authority provide by this Part; (ii) immediately upon any required surety or other bond being canceled or expiring, if the registrant has not provided the Superintendent with proof of a replacement bond satisfactory to the Superintendent; (iii) immediately upon filing by the registrant of a petition in bankruptcy; or (iv) thirty days after the registrant has had filed against it a petition in bankruptcy.

If the Superintendent has issued an order suspending a registration pursuant to this subparagraph (b)(3), such registration may be reinstated, if the Superintendent determines, in his or her sole discretion, that the registrant has cured all deficiencies set forth in such order.

(c) *Suspension after hearing; revocation*. Except as provided in paragraph (b) of this subpart, a registration of an MLS may be revoked or suspended only after notice and a hearing as provided in Supervisory Procedure G 111. Any hearing held pursuant to the provisions of this Part shall be noticed, conducted and administered in compliance with the State Administrative Procedure Act. Any order of suspension issued after notice and a hearing may include as a condition of reinstatement that the MLS make restitution of fees or other charges which have been improperly charged or collected, and of any funds that have been received by the MLS and not been properly and timely paid or credited to the proper Person, as determined by the Superintendent.

(d) *Surrender of registration*. With the prior approval of the Superintendent, any MLS may surrender its registration by delivering to the Superintendent written notice that it thereby surrenders such registration, but such surrender shall not affect the civil or criminal liability of an MLS for acts committed prior to such surrender.

(e) *Effect of suspension, revocation, etc*. No revocation, termination, suspension or surrender of any registration shall impair or affect the obligation of any pre-existing lawful contract between the MLS and any Person.

(f) *Duration of registration*. Every registration issued pursuant to this Part shall remain in force and effect until the same shall have been surrendered, revoked, terminated or suspended in accordance with any other provisions of this Part, but the Superintendent shall have authority to reinstate a suspended registration or to issue a new registration to an MLS whose registration shall have been revoked if no fact or condition then exists which would have warranted the Superintendent in refusing originally to issue such registration under this Part.

(g) *Order revoking or suspending registration*. Whenever the Superintendent shall revoke or suspend a registration, he or she shall forthwith execute in duplicate a written order to that effect. The Superintendent shall file one copy of such order in the office of the Department and shall serve the other copy upon the MLS.

(h) *Transfer of business upon suspension, revocation, etc*. In the event that the registration of an MLS shall be suspended, revoked, terminated or surrendered, such MLS shall immediately cease accepting any additional New York Mortgage Loan Servicing business. In the event of any revocation, termination or surrender, such MLS shall within ninety days thereof transfer its New York Mortgage Loan Servicing business to a successor MLS reasonably acceptable to the Superintendent.

§418.10 Fines and penalties.

The Superintendent may impose a fine against an MLS for any violation of the Banking Law, any regulation promulgated thereunder, any final or temporary order issued pursuant to Section 39 of the Banking Law, any condition imposed in connection with the grant of any application or request or any written agreement entered into with the Superintendent, or any conduct which would constitute grounds for revocation or suspension of the registration of such MLS.

§418.11 Business background and character and fitness requirements for Mortgage Loan Servicer registration

(a) *Business background*. Applicants for registration to engage in the business of Servicing Mortgage Loans shall demonstrate to the Superintendent's satisfaction that they have five years verifiable experience in the business of servicing mortgage loans or similar servicing experience or that they have engaged or shall engage in their employ one or more Persons having such experience. At the Superintendent's sole discretion, other relevant educational or business experience may be substituted for some of the servicing experience described in this subdivision.

(b) *General benefit*. Applicants shall demonstrate to the Superintendent their character and fitness to engage in the business of Servicing Mortgage Loans in a manner which is honest, fair, efficient, and free from deceptive and anticompetitive practices.

§418.12 Financial responsibility requirements for Mortgage Loan Servicers and Applicants, other than insured depository institutions covered by §418.13

Each Applicant for registration to engage in the business of Servicing Mortgage Loans shall provide the Superintendent with evidence acceptable to the Superintendent of its financial responsibility. In particular:

(a) Net worth. Each Applicant shall demonstrate the ability to maintain, and a registered Mortgage Loan Servicer or Exempted Person (other than an insured depository institution covered by **§418.13**) shall maintain net worth of at least $250,000 plus ¼ of 1% of the outstanding principal balance of aggregate mortgages serviced (whether or not in New York), provided, that, if such Person is solely a Third-party servicer, such net worth calculation shall be based upon the amount of the entity's New York mortgage loans serviced, and if such Person is a Third-party servicer with respect to certain mortgage loans and owns other mortgage loans or

the servicing rights thereto, it shall maintain net worth of at least $250,000 plus ¼ of 1% of the outstanding principal balance of the non-Third-party servicer loans and ¼ of 1% of the outstanding principal amount of the New York mortgage loans for which it is a Third-party servicer. Net worth for purposes of this Part shall consist of total equity capital, determined in accordance with Generally Accepted Accounting Principles, at the end of the most recent reporting period for which financial results are available, less: (i) goodwill and other intangible assets (excluding mortgage servicing rights); (ii) assets pledged to secure obligations of a Person other than the Servicer, (iii) any amounts due from officers or stockholders of the Servicer or from a related company, (iv) any amount in excess of the lower of cost or market value of mortgages in foreclosure, construction loans or property acquired through foreclosure, and (v) any other receivables that the Superintendent determines are not collectable. At least 10% of the net worth required under this paragraph shall consist of cash, cash equivalents or readily marketable securities.

(b) *Surety bond*.

1. Each MLS registered pursuant to this Part and each Exempted Person (other than an insured depository institution covered by Section 418.13) shall cause to be filed with the Superintendent a corporate surety bond in a principal amount of not less than $ 250,000. Such corporate surety bond shall be issued and filed with the Department by an insurance company licensed to do business in this State. If the Superintendent determines, in his or her sole discretion, that an MLS has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct under applicable laws and regulations of the United States or this State, the Superintendent may require such MLS to post a surety bond twice the amount of such bond as would otherwise be required by this subdivision.
2. Such bond shall be in favor of the Superintendent for the protection of the Superintendent and residential mortgage consumers located in New York State and it shall contain substantially the following language:

"In the event of the insolvency, liquidation or bankruptcy of such MLS, or the surrender or revocation of such MLS's registration, or where the Superintendent takes possession of such MLS pursuant to Section 636 of the Banking Law, the proceeds of this bond shall constitute a trust fund to be used exclusively by the Superintendent to reimburse consumer fees and undisbursed consumer payments or other charges determined by the Superintendent to be improperly charged or collected and to pay past due Department examination costs and assessments charged to the MLS, unpaid penalties, or other obligations of the MLS under applicable laws and regulations of the United States or this State . In the event of the insolvency, liquidation or bankruptcy of the MLS, or the expiration, surrender or revocation of such MLS's registration, or where the Superintendent takes possession of such MLS, the proceeds of the bond, upon demand of the Superintendent, shall be paid immediately to the Superintendent for disposition in accordance with the applicable provisions of the Banking Law."

(c) Fidelity Bond and E&O Coverage.

1. Each MLS registered pursuant to this Part and each Exempted Person (other than an insured depository institution covered by Section 418.13) shall cause to be filed with the Superintendent a Fidelity Bond and evidence of E&O Coverage (each naming the Superintendent as an additional loss payee) covering, in the case of the Fidelity Bond, losses arising from fraud, embezzlement, misplacement, forgery and similar events, and covering, in the case of the E&O Coverage, negligence by the servicer with respect to the payment of real estate taxes, hazard and flood insurance or the maintenance of mortgage guaranty insurance, in each case in a principal amount as follows based on its volume of business:

Required amount of Bond and E&O Coverage	Aggregate $ amount of NY loans serviced
$300,000	$100,000,000 or less
plus .15%	of the next $500,000,000
plus .125%	of the next $400,000,000
plus .100%	of the amount over $1 billion

(The amounts shown are the minimum required amounts for each of these policies.)

2. The amount of the Fidelity Bond and E&O Coverage shall be determined from information submitted in the annual Volume of Servicing Report ("VOSR") for the second year prior to the year covered by the Fidelity Bond or the E&O Coverage. For example, the 2009 bond and policy would be based upon the 2007 VOSR figures reported to the Department. Thereafter, adjustments to the amount of the bond shall be made within 30 days after filing the applicable VOSR. Moreover, a registered MLS may submit a sworn statement indicating the aggregate dollar amount of NY loans serviced during the first half of the calendar year, if such amount, on an annualized basis, would change the required amount of the Fidelity Bond and E&O Coverage. Such Fidelity Bond and E&O Coverage shall be issued and filed with the Department by a bonding company or insurance company licensed to do business in this State. If the Superintendent determines, in his or her sole discretion, that an MLS has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the Superintendent may require such MLS to post a Fidelity Bond and E&O Coverage in amounts that are twice the amount that would otherwise be required by this subdivision.
3. The Fidelity Bond and E&O Coverage may provide for a deductible amount not to exceed the greater of $100,000 or 5% of the face amount of such bond or coverage.

(d) *Modification or waiver of requirements*. Upon application as prescribed by the Superintendent, the Superintendent may reduce, waive, or modify the requirements under

Section 418.12: (i) for a Person engaged in the business of Servicing Mortgage Loans who services less than $4,000,000 in aggregate amount of Mortgage Loans and who does not collect money for the purpose of paying taxes or insurance on such loans; and (ii) in other cases, for good cause shown.

§418.13 Financial responsibility requirements for insured depository institutions

(a) Net Worth; Surety Bond. An institution whose deposits are insured by the Federal Deposit Insurance Corporation and that is at least adequately capitalized as defined in Section 38 of the Federal Deposit Insurance Act (12 U.S.C. Section 1831o) shall be exempt from the net worth and surety bond requirements of Section 418.12 of this Part.

(b) Fidelity Bond; E&O Coverage. Each institution whose deposits are insured by the Federal Deposit Insurance Corporation and that services mortgage loans shall comply with the Fidelity Bond and E&O Coverage applicable to Exempted Persons under Section 418.12(c)of this Part, provided that the Superintendent need not be named as an additional loss payee under each such bond or coverage.

§418.14 Transitional period

If an MLS is doing business in this state on June 30, 2009 and has filed an application for registration by July 31, 2009, it shall be deemed in compliance with the registration requirements of this Part until it has been notified by the Superintendent that its application has been denied, in which case it shall immediately transfer its servicing rights in this s6tate to an authorized mortgage loan servicer. If a Person is required to file an application for a license solely because of the amendments to this Part 418 that were effective August 23, 2011, so long as it has filed an application that is substantially complete by the 30th day after such effective date and expeditiously provides such additional information as may be required by the Superintendent, such Person may continue to operate without a license, until it is notified by the Superintendent that its application has been denied or until six months after such effective date, whichever is earlier.

[Changes only to heading. No changes to text necessary – updated through the Emergency Adoption Process]

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

NEW

§ 419.1 Definitions
§ 419.2 Servicer duty of fair dealing
§ 419.3 Compliance with federal and state laws
§ 419.5 Payments of tax or insurance premiums
§ 419.6 Crediting of payments
§ 419.7 Statement of account
§ 419.8 Late payment notices
§ 419.9 Payoff balances
§ 419.10 Fees
§ 419.11 Residential mortgage loan delinquencies and loss mitigation efforts
§ 419.12 Quarterly reporting
§ 419.13 Books and records and annual reports
§ 419.14 Servicing prohibitions

§ 419.1 Definitions

For purposes of this part, unless otherwise stated herein, terms shall have the same meaning as set forth in section 418.3 of Part 418.

a. "*Authorized representative*" means a person designated by the borrower in a written authorization signed by the borrower, including an attorney, employee or agent of a not-for-profit housing counseling or legal services organization, provided that nothing herein shall restrict the ability of a servicer to share information and communicate verbally with a person acting on behalf of a borrower following a tape recorded or other verifiable verbal consent by the borrower.

b. "*Home Affordable Mortgage Program" or "HAMP"* means the program established by the U.S. Department of the Treasury pursuant to sections 101 and 109 of the Emergency Economic Stabilization Act of 2008, as section 109 of the Act has been amended by section 7002 of the American Recovery and Reinvestment Act of 2009.

c. "*Loan modification"* means waiver, modification or variation of any material term of the mortgage loan, irrespective of whether the duration is short-term, long-term or life-of-loan, that changes the interest rate, forbears or forgives the payment of principal or interest or extends the final maturity date of the loan.

d. "*Loss mitigation option"* means an alternative to foreclosure, including loan modification, reinstatement, forbearance, deed-in-lieu and short sale.

e. "*Servicer*" means a person engaging in the servicing of mortgage loans in this state whether or not registered or required to be registered pursuant to paragraph (b-1) of subdivision two of Banking Law section 590.

f. "*Qualified Written Request*" means, as set forth in RESPA, 24 C.F.R. section 3500.21(e)(2), a written correspondence (other than notice on a payment coupon or other payment medium supplied by the servicer) that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and includes a statement of the reasons that the borrower believes the account is in error, if applicable, or that provides sufficient detail to the servicer regarding information relating to the servicing of the loan sought by the borrower.

g. "*RESPA*" means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. section 2601 et seq. and regulations adopted thereunder, also sometimes known as Regulation X, and found at 24 C.F.R. Part 3500.

§ 419.2 Servicer duty of fair dealing

A Servicer has a duty of good faith and fair dealing in its communications, transactions, and course of dealings with each borrower in connection with the servicing of the borrower's mortgage loan. This includes, but is not limited to, the duty to:

a. Safeguard and account for any money handled for the borrower;

b. Follow reasonable and lawful instructions from the borrower consistent with the underlying note and mortgage;

c. Act with reasonable skill, care and diligence;

d. Promptly provide the borrower with an accurate statement of account in accordance with Part 419.7(b);

e. Make borrowers in default aware of loss mitigation options and services offered by the Servicer in accordance with Part 419.11;

f. Provide trained personnel and telephone facilities sufficient to respond promptly to borrower inquiries regarding their mortgage loans; and

g. Pursue loss mitigation with the borrower whenever possible in accordance with Part 419.11.

§ 419.3 Compliance with federal and state laws

In addition to applicable provisions of Banking Law Article 12-D and the requirements of Part 418 and this Part, a Servicer shall comply with all applicable federal and New York state laws and regulations relating to mortgage loan servicing, including but not limited to RESPA, the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., section 6-k of the Banking Law and Article 9, Title 3-A, of the Real Property Tax Law.

§ 419.4 Consumer complaints and inquiries

a. A Servicer shall follow the requirements relating to "Qualified Written Requests" pursuant to RESPA, 24 C.F.R. section 3500.21.

b. In addition to the requirements of RESPA, a Servicer shall have procedures and systems in place to respond to and resolve borrower inquiries and complaints in a prompt and appropriate manner. A Servicer shall designate a customer service department staffed by trained personnel to whom borrowers may direct complaints and inquiries and provide a toll-free telephone number or collect calling services through which any borrower may direct telephone inquiries on the borrower's mortgage loan during regular business hours.

c. A Servicer shall clearly and conspicuously disclose with its welcome packet to borrowers, with each periodic billing statement, including as applicable either the monthly mortgage statement or annual coupon book, and with each annual statement pursuant to Part 419.7(a):

    1. an address to which borrowers can direct complaints and inquiries;

    2. a toll-free telephone number or collect calling services that gives the borrower access to a live person trained to answer inquiries and resolve or help resolve complaints, provided that the Superintendent in his or her discretion may waive or modify this requirement for good cause; and

    3. statements, (A) if applicable, that the Servicer is registered with the Superintendent, (B) that the borrower may file complaints about the Servicer with the New York State Department of Financial Services and (C) that the borrower may obtain further information from the New York State Department of Financial Services by calling the Department's Consumer Assistance Unit at 1-877-BANK-NYS or by visiting the Department's website at **www.dfs.ny.gov**. (Except that such statement by the Servicer shall refer to the web page and toll-free consumer telephone number for the Department of Financial Services set forth in Supervisory Procedure G 1 if different.)

d. Within 10 days of receiving a request in writing from a borrower or the borrower's authorized representative, a Servicer shall provide the borrower with the name, address, phone number or email address, if available, and other relevant contact information for the owner or assignee of the mortgage loan.

e. In addition to the information required to be disclosed under this section, a Servicer may, at its option, provide any other information regarding the servicing of the loan that it believes would be helpful to a borrower, provided that such additional information does not contradict or obscure the required disclosures.

§ 419.5 Payments of tax or insurance premiums

a. Any Servicer that receives funds from a borrower to be held in escrow for payment of taxes or insurance premiums shall make payments of the taxes or insurance premiums due under the mortgage in accordance with the requirements of RESPA, 24 C.F.R section 3500.17, Real Property Tax Law Article 9, Title 3-A and Banking Law section 6-k, and shall be liable to the borrower as provided therein.

b. A Servicer shall disclose any payments from the escrow account clearly and conspicuously in the next periodic statement provided to the borrower.

c. Where an escrow account has been established and a Servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, the Servicer shall conduct an escrow account analysis to determine the reasons for and extent of the deficiency and shall provide a written explanation to the borrower before seeking repayment of the funds from the borrower.

§ 419.6 Crediting of payments

a. *In general*. Except as provided in subsection (d), all amounts received by a Servicer on a mortgage loan at the address where the borrower has been instructed in writing to make payments shall be accepted and credited, or treated as credited, on the business day received, to the extent that the borrower has provided sufficient information to credit the account. For all mortgage loans originated after January 1, 2011, except where inconsistent with federal law or regulation such payments shall be credited to the interest and principal due on the home loan before crediting the payments to taxes, insurance, or fees.

b. *Reasonable payment requirements*. Requirements for making payments must be reasonable. It should not be difficult for most consumers to make conforming payments. A cut-off time of 5 p.m. for receipt of a mailed check at the location specified by the Servicer for receipt of such check would be considered reasonable.

c. *Non-conforming payments*. If a Servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to such requirements, the Servicer shall credit the payment as soon as commercially practicable, but in no event later than 5 days after receipt.

d. *Late payments*. Late payments must be credited before any late charge is collected.

e. *Scheduled method of accounting*. If a Servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date

shall be credited no later than the due date or 30 days from the date of receipt, whichever is earlier.

f. *Notice of noncredit*. If the Servicer receives any payment on a mortgage loan and does not credit it or treat it as credited by the due date or within 30 days from the date of receipt, whichever is earlier, the Servicer shall, within 10 business days of receipt, send the borrower notice by mail at the borrower's last known address indicating the reason the payment was not credited or treated as credited to the account, and any actions by the borrower necessary to make the loan current.

g. *Payment overages and shortages*. A Servicer shall establish written policies and procedures for determining the handling of payment overages and shortages.

§ 419.7 Statement of account

a. *Annual statements*. At least once annually, within 30 days of the end of the computation year, a Servicer shall deliver to the borrower a plain language statement of the borrower's account showing the unpaid principal balance of the mortgage loan at the end of the immediately preceding 12-month period, the interest paid during such period, and the amounts deposited into escrow and disbursed from escrow during the period. The annual escrow statement may be provided separately from the annual statement showing the unpaid principal and interest paid. The format and content of the annual escrow statement shall comply with the requirements of RESPA, 24 C.F.R. section 3500.17(i)(1).

b. *Payment Histories*. A Servicer shall promptly provide a borrower with an accurate accounting in plain English of the debt owed when requested by the borrower or borrower's authorized representative. Within 30 days of receipt of a request from the borrower or the borrower's authorized representative, a Servicer shall deliver to the borrower a payment history for the last 36 months (unless a different period is requested) of the borrower's account showing the date and amount of all payments made or credited to the account and the total unpaid balance. The Servicer shall have 60 days to deliver a payment history where the request is for a period longer than the last 36 months.

c. *Fees*. A fee shall not be charged to the borrower for the annual escrow statement or for one payment history furnished to a borrower in a 12-month period.

d. *Escrow shortages, surpluses, and deficiencies*. A shortage, surplus or deficiency in the escrow account shall be handled in accordance with the provisions of RESPA, 24 C.F.R. section 3500.17(f)(2). Alternatively, with the consent of the borrower, an excess balance may be applied to the principal balance.

§ 419.8 Late payment notices

Except where inconsistent with the automatic stay provisions of the Bankruptcy Code with respect to a borrower in a pending bankruptcy proceeding, a Servicer shall send a payment

reminder notice to a borrower at the borrower's last known address no later than 17 days after the payment becomes due and remains unpaid, provided that a Servicer is not required to send a separate payment reminder notice for each consecutive month in which the mortgage loan continues to remain unpaid.

§ 419.9 Payoff balances

A Servicer shall provide a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date, within a reasonable time, but in any event no more than 5 business days after receipt of a request from the borrower or borrower's authorized representative. No borrower shall be charged a fee for being informed or receiving a payoff statement or for being provided with a release upon full prepayment, provided that a Servicer may charge a reasonable fee for providing a payoff statement after five or more requests in any calendar year. The requirements of this section are in addition to the requirements of section 274-a of the Real Property Law regarding the written instrument to be provided by the holder of a mortgage upon real property in connection with a bona fide written demand as defined by section 274-a(2)(b)(iii) therein.

§ 419.10 Fees

a. *Schedule of fees*. A Servicer shall maintain and keep current a schedule of standard or common fees, such as nonsufficient fund fees. A Servicer shall make its schedule available on its website and to the borrower or borrower's authorized representative upon request. The schedule shall identify each fee, provide a plain English explanation of the fee and state the amount of the fee or range of amounts or if there is no standard fee how the fee is calculated or determined.

b. *Authorized fees*. A Servicer may only collect a fee if the fee is for services actually rendered and one of the following conditions is met: (1) the fee is expressly authorized and clearly and conspicuously disclosed by the loan instruments and not prohibited by law; (2) the fee is expressly permitted by law and not prohibited by the loan instruments; or (3) the fee is not prohibited by law or the loan instruments and is a reasonable fee for a specific service requested by the borrower that is assessed only after clear and conspicuous disclosure of the fee is provided to the borrower and the borrower expressly consents to pay the fee in exchange for the services.

c. *Attorneys Fees*. In addition to the limitations in paragraph (b), attorneys fees charged in connection with a foreclosure action shall not exceed reasonable and customary fees for such work. In the event a foreclosure action is terminated prior to the final judgment and sale for a loss mitigation option, a reinstatement or payment in full, the borrower shall only be liable for reasonable and customary fees for work actually performed.

d. *Late fees and Delinquency Charges.* A Servicer shall not impose any late fee or delinquency charge when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any

applicable grace period. Late charges shall be in accordance with Real Property Law section 254-b. Late charges shall not be (1) based on an amount greater than the past due amount; (2) collected from the escrow account or from escrow surplus without the approval of the borrower; or (3) deducted from any regular payment. Except as provided in Real Property Law section 254-b(2), late charges shall not be imposed more than once with respect to a single delinquent installment and shall not exceed 2% of the amount of the delinquent installment.

§ 419.11 Residential mortgage loan delinquencies and loss mitigation efforts

a. *In general.* Servicers shall make reasonable and good faith efforts consistent with usual and customary industry standards and paragraph (b) of this section to engage in appropriate loss mitigation options, including loan modifications, to avoid foreclosure. Servicers must have adequate staffing, written procedures, resources and facilities to provide timely and appropriate responses to borrower inquiries and complaints regarding available loss mitigation options and to ensure that borrowers are not required to submit multiple copies of required documents during consideration for a loss mitigation option. Whenever a borrower is at least 60 days delinquent (or earlier at the Servicer's option) or whenever a borrower who is in default or at imminent risk of default contacts the Servicer with respect to a loan modification or other loss mitigation assistance, the Servicer shall (1) inform the borrower of the facts concerning the loan, the nature and extent of the delinquency or default, the Servicer's loss mitigation protocols, and the loss mitigation options and services offered by the Servicer, and (2) if requested by the borrower, negotiate with the borrower in good faith, subject to the Servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout of the delinquency or to prevent the borrower's default, including a loan modification. Notwithstanding any language to the contrary, nothing in this Part shall be construed to require a Servicer to perform services in a manner inconsistent with the terms of the note, mortgage or contract for the servicing of a mortgage loan.

b. *Loan Modifications.* Servicers should consider a loan modification as an alternative to foreclosure when (1) the borrower demonstrates that he or she is in imminent risk of defaulting on the mortgage loan as a result of a financial hardship or has experienced a financial hardship and is unable to maintain the payment at the current amount required under the mortgage loan or is unable to make up the delinquent payments and (2) the net present value of the income stream expected of the modified loan is greater than the net present value of the income stream that is expected to be recovered through the disposition of the property through a foreclosure sale. Loan modifications should be structured to result in payments that are affordable and sustainable for the borrower. Servicers that are participating in HAMP shall offer loan modifications in compliance with the HAMP guidelines or directives, including using reasonable efforts to remove prohibitions or impediments to their authority and to obtain third party

consents and waivers that are required, by contract or law, in order to effectuate a loan modification under HAMP.

c. *Written acknowledgement*. Unless a longer time is permitted under the guidelines or directives implementing HAMP, within 10 business days of receiving a request from a borrower or authorized representative for a loss mitigation option, the Servicer shall transmit a written acknowledgement of the request to the borrower and, if applicable, to the authorized representative. The acknowledgement shall identify with specificity any information needed from the borrower in order for the Servicer to review the borrower's loss mitigation request. The acknowledgement shall also include the key elements of the loss mitigation process, including, as appropriate, the following:

    1. The information that the borrower may be asked to provide and third party approvals that may be required for the Servicer to evaluate and complete the request for a loan modification or other loss mitigation option;
    2. The average length of time for a decision to be made regarding a loan modification or other loss mitigation option; and
    3. A notification of the actions the Servicer, lender or owner of the mortgage may take during the loss mitigation process, such as whether the borrower may continue to receive collection letters or foreclosure notices, whether the foreclosure process will continue or whether, and to what extent collection and foreclosure will be stayed.

d. *Decisions regarding loss mitigation options*. Within 30 days of receiving all required *documentation* from the borrower and third parties, unless a shorter time is required under regulations or guidelines implementing HAMP, a Servicer shall complete its evaluation of the borrower's eligibility for a loan modification or other loss mitigation option requested by the borrower and advise the borrower, and if applicable, the borrower's authorized representative, in writing of its determination. Where the Servicer approves the borrower for a loan modification, including a trial modification, or other loss mitigation option, the written notice must provide the borrower with clear and understandable written information explaining the material terms, costs and risks of the option offered. Where the Servicer determines that the borrower cannot be approved for a loan modification or other requested loss mitigation option, the written notice must state with specificity the reasons for the determination, contact information for a person at the mortgage servicer to reconsider such a denial and any other foreclosure prevention alternatives for which the borrower may be considered. In addition, such denial shall also include the following statement, in boldface type and in print no smaller than the largest print used elsewhere in the main body of the denial: If you believe the loss mitigation request has been wrongly denied, you may file a complaint with the New York State Department of Financial Services at 1-877-BANK-NYS (226-5679).or **www.dfs.ny.gov**. (Except that such statement by the Servicer shall refer to the web page and toll-free consumer telephone number for the Department of Financial Services set forth in Supervisory Procedure G 1, if different.)

e. *Borrower programs and counseling*. A Servicer shall take reasonable steps to ensure that its staff is aware of programs designed to assist borrowers avoid foreclosure or resolve delinquency. The Servicer shall make available to homeowners who are at least 60 days delinquent or who they have reason to believe are experiencing a financial hardship and are in imminent risk of default a list of government approved not-for-profit housing counselors in the homeowner's geographic area as listed on the Department of Financial Services website (www.dfs.ny.gov) or the Division of Housing and Community Renewal's website (www.nysdhcr.gov).

f. *Loss mitigation contacts*. A Servicer shall maintain and make available to borrowers and borrowers' authorized representatives current contact information to communicate and negotiate with the Servicer's designated loss mitigation staff who are authorized to discuss and negotiate loss mitigation options. The contact information shall include toll free telephone number(s) for direct communication with a loss mitigation staff person, fax number(s) for receipt of documents and e-mail addresses.

g. *Escalation process*. The Servicer shall have a process through which borrowers may escalate disagreements to a supervisory level where a separate review of the borrower's eligibility or qualification for a loss mitigation option can be performed. The Servicer shall also designate special escalation contacts for not-for-profit housing counselors, government representatives, legal services organizations and attorneys to utilize when necessary to review or intervene in the handling of a pending loss mitigation matter.

h. *Waiver of legal claims and defenses*. A Servicer shall not require a homeowner to waive legal claims and defenses as a condition of a loan modification, forbearance or repayment plan.

i. *Presumption of good faith*. It shall be presumed that a Servicer has engaged in good faith loss mitigation efforts if the Servicer offers loan modifications and other loss mitigation options in accordance with the HAMP guidelines or directives developed by the United States Department of Treasury.

j. *Alternative loss mitigation options*. Nothing in this section shall be construed to prevent a Servicer from offering or accepting alternative loss mitigation options, including other modification programs offered by the Servicer, a short sale, a deed-in-lieu of foreclosure or forbearance, if the borrower requests such an alternative, is not eligible for or does not qualify for a loan modification under HAMP, or rejects the Servicer's loss mitigation proposal.

k. *Foreclosure.* A Servicer must develop and implement policies and procedures to provide notification to its foreclosure attorneys and trustees regarding a borrower's status for consideration of a loss mitigation option and whether the borrower is being evaluated for, or is currently in, a trial or permanent modification. A Servicer should avoid initiating a foreclosure action if the borrower has requested and is being considered for a loss mitigation option or if the borrower is in a trial or permanent modification and is not more than 30 days in default under the modification agreement. A Servicer must also develop and implement policies and procedures to

ensure that its foreclosure attorneys comply with the requirements of New York Civil Practice Law and Rules Section 3408 with regard to mandatory settlement conferences in residential foreclosure actions, including that their attorneys are fully authorized to resolve the foreclosure action and to negotiate with the borrower in good faith to reach a mutually agreeable resolution of the action, including a loan modification, if possible, and that its attorneys bring to the settlement conference relevant documents and information, including the payment history, an itemization of the amounts needed to cure and pay off the loan, the mortgage and note and, if the plaintiff is not the owner of the mortgage and note, the name, address and telephone number of the legal owner of the mortgage and note.

l. *Servicer Protocols*. A Servicer shall maintain a system for servicing delinquent loans that includes at a minimum the following:

    1. An accounting system that promptly alerts the appropriate department that a mortgage is delinquent;
    2. Procedures for identifying and working with borrowers who are at risk of foreclosure or delinquency in order to help such borrowers, including procedures for making borrowers aware of programs and counseling as set forth in subsection (e) above;
    3. Procedures and controls for sending delinquency notices, assessing late charges, handling partial payments, maintaining collection histories, and reporting delinquencies to credit bureaus;
    4. Guidelines for analyzing each delinquency; and
    5. Procedures for management review and evaluation of decisions regarding appropriate loss mitigation options or commencement of foreclosure actions.

§ 419.12 Quarterly reporting

The Superintendent may require each Servicer that is either registered or required to be registered with the Superintendent or that is an exempt organization regulated by the Superintendent to compile and submit to the Superintendent, within 30 days of the end of each calendar quarter, a report in the format required by the Superintendent, that contains the following information for the preceding months for mortgage loans in New York:

a. The number and type of the mortgage loans the Servicer is servicing;

b. The number and type of the mortgage loans that the Servicer is servicing that are in payment default and a breakdown of these mortgage loans by length of payment delinquency, including 30-day, 60-day, and 90-day and longer delinquencies;

c. Information on loss mitigation activities undertaken including, but not limited to, the following:

1. The proactive steps taken to identify borrowers at a heightened risk of default, such as those with impending interest rate resets or with mortgages due to recast, including, but not limited to, contacts with borrowers to assess their ability to repay their mortgage loan obligations;
2. The number and type of workout arrangements in process;
3. The number and type of workout arrangements, including the percentage of each type of workout arrangement, entered into;
4. The number and type of the mortgage loans for which each type of workout arrangement was entered into; and
5. The number of and reasons for redefaults.

d. For workouts that involve mortgage modifications, the total number of modifications resulting in each of the following:
    1. Additions of delinquent payments and fees to loan balances;
    2. Interest rate reductions and freezes;
    3. Term extensions;
    4. Reductions of principal;
    5. Deferrals of principal;
    6. Combinations of modifications described in subsections (1), (2), (3), (4) or (5);
    7. Increased monthly principal and interest payments;
    8. No change in monthly principal and interest payments;
    9. Monthly principal and interest payments decreasing less than 10 percent;
    10. Monthly principal and interest payments decreasing between 10 percent and 20 percent;
    11. Monthly principal and interest payments decreasing by 20 percent or more.

e. Information regarding loans that have been modified and then entered into default, including information regarding defaults where the loan modification resulted in the following:
    1. Higher monthly payments by the homeowner;
    2. Same monthly payments by the homeowner;
    3. Lower monthly payments by the homeowner of up to 10 percent;
    4. Lower monthly payments by the homeowner of between 10 to 20 percent, or
    5. Lower monthly payments by the homeowner of more than 20 percent.

f. The number of preforeclosure notices served pursuant to Real Property Actions and Proceedings Law section 1304, foreclosure actions commenced, judgments obtained

and foreclosure sales concluded in this state in connection with mortgage loans the MLS is servicing;

g. The number of settlement conferences scheduled in foreclosure actions pursuant to Civil Practice Law and Rules section 3408 and the outcome of such conferences, i.e. matter adjourned, resolution reached and nature of the resolution, resolution not reached and reason;

h. The number and type of REO properties held;

i. The number and dollar amount of adjustable rate mortgage loans, interest only mortgage loans and payment option ARM mortgage loans held;

j. The specific reasons for the delinquency, if known, such as death, illness, change in marital status, decrease in income, unemployment, loss of rental income, increase in escrow account, interest rate reset, other debt obligations, payment dispute etc. A Servicer should identify the primary reason for delinquency; and

k. Any other information that the Superintendent may consider necessary, including geographic information regarding applicable mortgage loans.

§ 419.13 Books and records and annual reports

a. *In general*. This section applies to each Servicer that is either registered or required to be registered with the Superintendent or that is an exempt organization regulated by the Superintendent. Each Servicer shall (1) keep such books and records in a manner that will allow the Superintendent to determine whether the Servicer is complying with applicable laws and regulations and (2) preserve its books and records for at least three years after making the final entry with respect to any New York mortgage loan being serviced by the Servicer, unless a longer period is provided by statute. At a minimum, books and records must provide information regarding:

    1. Loan payments received, disbursements made and the dates of transactions for each account;

    2. The principal balance of each loan account;

    3. The amount and due date of each loan installment for each loan serviced;

    4. The servicing history for all mortgage loans serviced by the Servicer, including the servicing history of loans acquired from another entity, provided that the Servicer is only required to maintain records of any prior Servicer of a loan to the extent that such information is reasonably available; and

    5. The servicing of delinquent loans, including loans in foreclosure.

b. *Telephone and written communications*. The Servicer must maintain a telephone log and file of all written correspondence, including fax transmissions and e-mail correspondence, relating to the servicing of each mortgage loan, including, but not limited to communications and correspondence between it and

1. Any previous loan servicer;
2. The lender or any owner of such loan;
3. The holder of the mortgage or person acting on the holder's behalf;
4. The borrower or the borrower's authorized representative; and
5. A governmental entity.

c. *Quality control and internal audit function*. The Servicer must have internal controls (commensurate with the size and complexity of the servicing operations) which periodically assess the Servicer's loan servicing to ensure that servicing standards and procedures are being met. At least annually, the Servicer shall conduct an internal assessment of all its servicing activity. The Servicer shall also conduct periodic audits of payment processing functions to ensure payments are properly credited, including payments remitted to the servicer via certified mail.

d. *Delinquency and foreclosure reports*. In addition to the quarterly reports required pursuant to section 419.12, the Servicer shall collect, maintain and analyze appropriate data on delinquency and foreclosure rates to enable it to (1) evaluate the effectiveness of its collection efforts and overall performance of its servicing portfolio and (2) identify discriminatory trends. The Servicer shall further determine how its delinquency and foreclosure rates compare with rates in reports published by the industry, investors and others and analyze significant variances between its foreclosure and delinquency rates and those found in reports and publications and take appropriate corrective action.

e. *Quarterly Financial Report and Net Worth Certification*. Within 45 days of the end of each fiscal quarter, the Servicer must submit to the Department, in a format, prescribed by the Superintendent, a quarterly financial report and certification of net worth.

f. *Annual audited financial statements*. Unless the Superintendent in his or her sole discretion determines that other financial information may be substituted, the Servicer shall submit an annual audited financial statement as of its fiscal year end which must be filed with the Department within 90 days of the close of the fiscal year. The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant in accordance with generally accepted auditing standards.

g. *Annual and other reports*. The Superintendent may require Servicers to file other regular or special reports, including reports with respect to mortgage delinquencies and foreclosures, annually or as otherwise requested by the Superintendent. Such reports shall be in a form prescribed by the Superintendent and, except as permitted by the Superintendent, shall be subscribed and affirmed as true under the penalty of perjury.

§ 419.14 Servicing prohibitions

A Servicer is prohibited from:

a. Engaging in unfair or deceptive business practices or misrepresenting or omitting any material information in connection with the servicing of the loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a loan, the terms and conditions of the servicing agreement or the borrower's obligations under the loan;

b. Placing hazard, homeowner's or flood insurance on the mortgaged property when the Servicer knows or has reason to know that the borrower has an effective policy for such insurance;

c. Failing to provide written notice to a borrower upon taking action to place hazard, homeowner's or flood insurance on the mortgaged property, including a clear and conspicuous statement of the procedures by which the borrower may demonstrate that he or she has the required insurance coverage and by which Servicer shall terminate the insurance coverage placed by it and refund or cancel any insurance premiums and related fees paid by or charged to the borrower;

d. Placing hazard, homeowner's or flood insurance on a mortgaged property, or requiring a borrower to obtain or maintain such insurance, in excess of the replacement cost of the improvements on the mortgaged property;

e. Failing to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's or flood insurance placed by a mortgage lender or the Servicer if the borrower provides reasonable proof that the borrower has obtained coverage such that the forced placement insurance is no longer necessary and the property is insured;

f. Requiring funds to be remitted by means more costly to the consumer than a bank or certified check or attorney's check from an attorney's account;

g. Refusing to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower, provided that the servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the borrower;

h. Failing to provide the borrower with the notice required by Real Property Actions and Proceedings Law section 1304 at least ninety days before commencing legal action against the borrower or in the case of a residential cooperative, failing to provide the debtor with the notice required by Uniform Commercial Code section 9-611 at least ninety days before disposing of the debtor's cooperative interest; and

i. Failing to make the filings with the Superintendent as required by Real Property Actions and Proceedings Law section 1306.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

Sec.

420.1 Mortgage loan originator license and revocation
420.2 Exemptions
420.3 Definitions
420.4 Application procedure for initial license as an MLO
420.5 Originating entities permitted to employ or contract with certain mortgage loan originators on an interim basis
420.6 Notice of approval or denial of application; license; and internet listing
420.7 Inactive status
420.8 Suspension and termination of license
420.9 Renewal of license
420.10 Surrender of license
420.11 Pre-licensing educational requirement
420.12 Approved education providers
420.13 Pre-license testing requirements
420.14 Continuing education requirements
420.15 Surety bonds
420.16 Reports; permissive challenges by licensees
420.17 Calculation and collection of fees
420.18 Duties of originating entity
420.19 Duties of MLO
420.20 Prohibited conduct
420.21 Administrative action and penalties
420.22 Effective date

§ 420.1 Mortgage loan originator license and revocation.

a. Section 599-c of the Banking Law provides that no individual, unless exempt, shall engage in mortgage loan originating without first obtaining and maintaining a license from the Superintendent of Financial Services (formerly the Superintendent of Banks) pursuant to Article 12-E of the Banking Law. This regulation implements the Superintendent’s authority to license mortgage loan originators.

b. Section 599-n of the Banking Law authorizes the Superintendent to revoke a license to engage in mortgage loan originating. In addition, Sections 599-i and 599-n set out the circumstances under which a license will be terminated by operation of law.

§ 420.2 Exemptions.

As provided in Section 599-c(3) of the Banking Law, the following individuals are exempt from the licensing requirements otherwise applicable under Article 12-E:

a. *Registered mortgage loan originators*. A registered mortgage loan originator (i.e. an individual who performs the functions of an MLO, who is employed by a depository institution, certain subsidiaries of a depository institution or an institution regulated by the Farm Credit Administration, and who is registered with the NMLS).

b. *Immediate family loans*. Any individual who offers or negotiates the terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

c. *Loans on an individual's residence*. Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling or residential real property that served as the individual's own residence.

d. Certain *Attorneys*. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

e. *Servicer employees*. Any individual employed by a mortgage loan servicer registered under Article 12-D of the Banking Law, who negotiates any modification of an existing residential mortgage loan on behalf of such servicer, and does not otherwise act as a mortgage loan originator, unless licensing is required by a rule, regulation, guideline or interpretation issued by the U.S. Department of Housing and Urban Development under Public Law 110-289.

f. *Manufactured home sellers*. Any individual involved in the sale of manufactured homes, if exempted from licensing by a rule, regulation, guideline or interpretation issued by the U.S. Department of Housing and Urban Development under Public Law 110-289.

g. *Exemptions approved by the Superintendent*. The provisions contained in this Part shall not apply to such other individuals as the Superintendent may by order exempt for good cause.

§ 420.3 Definitions.

For purposes of this Part:

a. “Annual Expiration Date” with respect to any MLO means December 31 of each year.

b. “Hour” means a unit of time as defined by the NMLS.

c. "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings and adoptive relationships.

d. "Individual" means a natural person.

e. Loan processor or underwriter-

   1. "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, an individual licensed, or exempt from licensing, under this Part, provided that such individual does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

   2. For purposes of this subdivision, "clerical or support duties" may include, subsequent to the receipt of an application:

      i. the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or

      ii. communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

f. “Manufactured home” means any manufactured home as defined in Uniform Commercial Code § 9-102(53) or mobile home included in the definition of dwelling as defined in Section 1203(v) of the Truth in Lending Act.

   g.

g. 1. Mortgage loan originator (“MLO”) means an individual who for compensation or gain or in the expectation of compensation or gain:

      i. takes a residential mortgage loan application; or

      ii. offers or negotiates terms of a residential mortgage loan.

   2. MLO does not include:

      i. any individual engaged solely as a loan processor or underwriter except as otherwise provided in subdivision four of Section five hundred ninety-nine-c of Article 12-E;

ii. an individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable New York law, unless the individual is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

iii. an individual solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of title 11, United States Code.

3. For purposes of this Part, "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

[iv]i. acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

[v]ii. bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

[vi]iii. negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

[vii]iv. engaging in any activity for which an individual engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

[viii]v. offering to engage in any activity, or act in any capacity, described in subparagraphs (i), (ii), (iii), or (iv) of this paragraph.

h. "Nationwide Mortgage Licensing System and Registry" ("NMLS") means a mortgage licensing system and registry developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

i. "Originating entity" means an individual or entity licensed or registered pursuant to Article 12-D, an individual or entity engaged in the origination of residential mortgage loans secured by manufactured homes licensed under Article IX or Article 11-B or such other employer of mortgage loan originators as the Superintendent may approve in writing.

j. "Prior version" means Article 12-E as in effect from January 1, 2008 to July 10, 2009.

k. "Residential mortgage loan" shall mean a loan to a natural person made primarily for personal, family or household use, secured by either a mortgage, deed of trust or other equivalent consensual security interest on a dwelling (as defined in Section 1203(v) of the Truth in Lending Act) or residential real property or any certificate of stock or other evidence of ownership in, and proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of residential real property and shall

include any refinance and, to the extent required by the Secretary of the U.S. Department of Housing and Urban Development, modification of any such existing loan.

l. “Registered mortgage loan originator" means any individual who:

   0. Meets the definition of mortgage loan originator and is an employee of:

      i. a depository institution;

      ii. a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

      iii. an institution regulated by the Farm Credit Administration; and

   1. Is registered with, and maintains a unique identifier through, the NMLS under regulations adopted by the federal banking regulators.

   2. For purposes of this definition, the term "Depository institution" shall have the same meaning as in Section three of the Federal Deposit Insurance Act, and includes any credit union.

m. "Residential real property" shall mean real property located in this state improved by a one-to-four family residence or residential unit in a building used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to unimproved real property upon which such residence is to be constructed.

n. "Unique identifier" means a number or other identifier assigned by protocols established by the NMLS.

§ 420.4 Application procedure for initial license as an MLO.

a. *Effective date*. Effective July 11, 2009, no individual, unless exempt or permitted in accordance with the rules in subdivision (c) and subdivision (d) below, shall engage in mortgage loan originating without first being licensed by the Superintendent as an MLO pursuant to Article 12-E of the Banking Law. In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace:

   1. Each individual required under Article 12-E to be licensed as an MLO, other than an individual described in paragraph (2) or (3) of this subdivision, shall be licensed pursuant to this Part not later than July 31, 2010, or such later date approved for mortgage loan originators in this state by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a) and approved by the Superintendent;

   2. Each individual authorized as a mortgage loan originator under prior law not later than July 11, 2009, shall be licensed pursuant to this Part not later than January 1, 2011, or such later date approved for mortgage loan originators in this state by the Secretary of the U.S. Department of Housing and Urban

Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a) and approved by the Superintendent; and

3. Notwithstanding paragraphs (1) and (2) of this subdivision, effective July 11, 2009, no individual shall act as a mortgage loan originator if such individual has been convicted of, or pled guilty or nolo contendere to, a felony of the types and during the time periods described in paragraph (b) of subdivision one of Section 599-e of Article 12-E.

b. *Submission of application*. Each applicant to become a licensed mortgage loan originator shall file an application in such form as shall then be required by the Superintendent.

c. *Transition Rules*. Each applicant described in this subdivision shall file an application as follows:

1. An individual who was engaged in mortgage loan origination activities as of July 11, 2009, who filed an application pursuant to the prior version of Article 12-E prior to such date, and whose application had not been approved, denied or withdrawn by the Superintendent, shall file with the Superintendent by November 30, 2009 all such additional information as the Superintendent may reasonably require to comply with the informational requirements of Article 12-E and shall satisfy the pre-licensing testing and educational requirements and bonding requirements of Article 12-E by May 31, 2010;

2. An individual who was engaged in mortgage loan origination activities with respect to manufactured homes as of July 11, 2009 shall file with the Superintendent by December 31, 2009 an application to be licensed as an MLO under Article12-E and shall satisfy the pre-licensing testing and educational requirements and bonding requirements of Article 12-E by May 31, 2010; and

3. An individual authorized to act as an MLO as of July 11, 2009 shall file with the Superintendent by November 30, 2009 all such additional information as the Superintendent may reasonably require to comply with the informational requirements of Article 12-E and shall satisfy the pre-licensing testing and educational requirements and bonding requirements of Article 12-E by August 31, 2010.

Unless precluded by paragraph (3) of subdivision (a) of this section, all individuals covered by this subdivision may continue to engage in the activities of an MLO until the earlier of the date he or she receives notice that his or her license application under this Part has been denied or July 31, 2010 in the case of individuals covered by paragraphs (1) and (2) of this subdivision (c) or January 1, 2011 in the case of individuals covered by paragraph (3) of subdivision (c).

d. New *Applications*. All individuals not covered by subdivision (c), but who are required to be licensed hereunder, shall file an application under this subdivision. Each applicant described in this subdivision shall file an application as follows:

1. Any new applicant who was engaged in the business of a mortgage loan originator as of July 11, 2009 as an employee or independent contractor of a bank, trust company, private banker, bank holding company, savings bank, savings and loan association, thrift holding company or credit union organized under the laws of this state, another state or the United States, or a subsidiary or affiliate of such a bank, trust company, private banker, bank holding company, savings bank, savings and loan association, thrift holding company or credit union and was not required to be authorized under the prior version of Article 12-E, but who must be licensed under the new Article 12-E, shall file with the Superintendent by November 30, 2009 an application to be licensed as an MLO under Article12-E and shall satisfy the pre-licensing testing and educational requirements and bonding requirements of Article 12-E by May 31, 2010;
2. Any new applicant not covered by the paragraph (1) of this subdivision shall file with the Superintendent an application to be licensed as an MLO under Article12-E at least 120 days prior to the date such person expects to engage in such activities and shall, if such application is filed before January 31, 2010, satisfy the pre-licensing testing and educational requirements and bonding requirements of Article 12-E by May 31, 2010; and
3. All other applicants not covered by the paragraph (1) of this subdivision shall file with the Superintendent an application to be licensed as an MLO under Article12-E at least 120 days prior to the date such person expects to engage in such activities, shall satisfy the pre-licensing testing and educational requirements and bonding requirements of Article 12-E and shall be licensed hereunder prior to engaging in an any MLO activities. .

Any individual who applies prior to January 31, 2010, and unless precluded by paragraph (3) of subdivision (a) of this section, may engage in MLO activities when notified in writing by the Superintendent that his or her application was informationally complete and had been accepted for processing. All such individuals must complete the pre-licensing testing and educational requirements and bonding requirements of Article 12-E by the earlier of May 31, 2010 and be licensed by July 31, 2010.

e. The application for initial license as an MLO under this Part shall be affirmed by the applicant and submitted electronically in such form and in such manner as may be prescribed by the Superintendent. Instructions for submission of applications shall be available on the Department of Financial Services' (formerly the Banking Department) website (**www.dfs.ny.gov**).

f. *Fees*. Except for individuals covered by paragraphs (1) and (3) of subdivision (c) of this section, a completed application shall be accompanied by payment of the following fees: (i) an investigation and initial license fee, (ii) such fees as may be required for processing fingerprints, and (iii) a processing fee, all as described in Section 420.17 of this Part. No such fee will be refunded if the application is withdrawn or not approved. The schedule of fees shall be posted on the Department's website

(**www.dfs.ny.gov**). For individuals covered by subdivision (c) of this section, if the NMLS develops the capacity to process fingerprints through the FBI, the Superintendent may require the applicant to submit a new set of fingerprints in the form required by the NMLS and to pay any processing fees required by the FBI and the NMLS.

g. *Fingerprints and fingerprint certification*. An applicant shall provide two sets of fingerprints in such form as shall be acceptable to the New York State Division of Criminal Justice Services, together with a fingerprint certification in the form prescribed by the Superintendent. When required by the Superintendent, an applicant also shall submit his or her fingerprints through the NMLS, in which case the applicant shall provide the Superintendent with only one set of prints.

h. *Information and documents required*. The application shall include the information and documents required by Supervisory Procedure MB 107 as well as such additional information and documents as the Superintendent deems necessary to determine whether the applicant satisfies the standards set forth in Section 599-e of the Banking Law. Nothing contained herein shall limit the Superintendent's authority to consider all relevant factors set forth in Article 12-E in determining whether to approve a license application under this Part.

i. *In-person conferences*. In the absence of a showing of undue hardship, the Superintendent may also require that the applicant and any officers, directors and/or representatives of the originating entity with which the applicant is employed or an independent [contactor] contractor of to appear at the Department to present information about the qualifications of the applicant.

§ 420.5 Originating entities permitted to engage or contract with certain mortgage loan originators on an interim basis.

a. Notwithstanding Section 420.4(a) of this Part, with respect to an individual who was engaged in mortgage loan origination activities as of July 11, 2009 and whose application pursuant to the prior version of Article 12-E had not been approved, denied or withdrawn by the Superintendent prior to such date, an originating entity may permit such individual to engage in mortgage loan originating until the earlier of (i) July 31, 2010; or (ii) the date the originating entity receives notice that the Superintendent had denied such individual's license application or the license application under this Part has been withdrawn.

b. Notwithstanding Section 420.4(a) of this Part, with respect to an individual who was engaged primarily in originating residential mortgage loans secured by manufactured homes as of July 11, 2009 and who has filed an application as required above, an originating entity originating residential mortgage loans secured by manufactured homes may permit such individual to engage in such mortgage loan originating activities until the earlier of (i) July 31, 2010; or (ii) the date the originating entity receives notice that the Superintendent had denied such individual's license application or the license application under this Part has been withdrawn.

c. Notwithstanding Section 420.4(a), with respect to an individual authorized to act as an MLO before July 11, 2009, an originating entity may permit such individual to engage in mortgage loan originating until the earlier of (i) January 1, 2011; or (ii) the date the originating entity receives notice that the Superintendent had denied such individual's license application or the license application under this Part has been withdrawn.

§ 420.6 Notice of approval or denial of application; license; and internet listing.

a. Upon licensing any applicant as an MLO, the Superintendent shall:
    1. Transmit notice of approval, in such form as the Superintendent deems appropriate, to the originating entity that currently employs the MLO, or for which the MLO is an independent contractor;
    2. Issue a license attesting to such approval;
    3. Transmit one copy of such license to the applicant; and
    4. File another copy of such license in his or her office.
b. The Superintendent shall maintain upon the Department's website (**www.dfs.ny.gov**).a list of licensed MLOs. The list shall indicate the following:
    1. Name of the MLO;
    2. License number of the MLO; and
    3. The originating entity that currently employs the MLO, or for which the MLO is an independent contractor.
c. A license issued pursuant to Article 12-E of the Banking Law is not transferable.
d. The Superintendent must deny an application unless he or she finds that the applicant possesses the general character and fitness, the education qualifications, pre-license test results, bond requirements, absence of felony convictions, and other factors set forth in Section 599-e of the Banking Law. In making such determination the Superintendent may consider all relevant factors, including but not limited to, employment history; educational background; financial responsibility; history of complaints or consumer abuse relating to real estate transactions; regulatory fines and enforcement actions; revocation, suspension or denial of licenses, certifications, authorizations or registrations in this state or any other state.
e. Upon denying an application for a license as an MLO, the Superintendent shall notify, in writing, the applicant and the originating entity with which the applicant is employed or affiliated that the application was denied and that the applicant may not engage in mortgage loan originating in this state.

§ 420.7 Inactive status

The license of an MLO is not effective during any period when the MLO is not employed by or affiliated with an originating entity. When an MLO ceases to be employed by or affiliated with an originating entity, the originating entity shall promptly notify the Superintendent of the termination date of such employment or affiliation. The license of such MLO shall be placed in inactive status until the Superintendent receives confirmation from an originating entity of the MLO's new employment or affiliation. An MLO shall continue to pay the annual license fee and to take required education courses while in inactive status.

§ 420.8 Suspension and termination of license.

a. *Failure to pay annual license fee*.
    1. All MLO licenses shall terminate on the annual expiration date unless the annual license fee is paid prior to or upon the date the payment is due.
    2. In the event such fee is not paid by the due date, the Department shall notify the originating entity of the termination of the license.
    3. If such license expires because the annual fee has not been paid by the due date, the license may be reinstated if such fee is paid within sixty days after such due date.

b. *Failure to timely complete education requirements*. Each licensed MLO shall complete and provide evidence to the Superintendent through the NMLS or otherwise as directed by the Superintendent of the completion of his or her annual education requirements by the annual expiration date of such MLO's license. Failure to timely complete and demonstrate such completion shall cause the MLO's license to be terminated on such annual expiration date, irrespective of whether the MLO has made satisfactory payment of the annual license fee. The license may be reinstated if the MLO: (i) demonstrates to the Superintendent's satisfaction that the applicable education requirements were completed within sixty days of the annual expiration date; or (ii) satisfies any conditions provided by the Superintendent pursuant to Section 420.12(b) of this Part.

c. *Failure to file reports or maintain bond.* The Superintendent may, without notice or a hearing, issue an order suspending any license: (i) thirty days after the date the mortgage loan originator fails to file any report required to be filed with the Superintendent pursuant to the authority provided in Article 12-E; or (ii) immediately upon termination of any required surety bond with respect to the licensee if the Superintendent has not received evidence of a satisfactory replacement bond. If the Superintendent has issued an order suspending a license pursuant to this authority, such license may be reinstated, if the Superintendent determines, in his or her sole discretion, that the licensee has cured all deficiencies set forth in such order by the close of business ninety days after the date of such suspension order. Otherwise, unless the Superintendent has, in his or her sole discretion, extended such suspension, the license of such mortgage loan originator shall be deemed to be automatically terminated by operation of law at the close of business on such ninetieth day.

d. *Notification of suspension or termination*. Whenever a license shall have been suspended or terminated in accordance with this section, the Superintendent shall notify the MLO and the affected originating entity that the license has been suspended or terminated and that the MLO may not engage in mortgage loan originating in this state.

e. *Civil and criminal liability*. A suspension or termination of a license in accordance with this section shall not affect such MLO's civil or criminal liability for acts committed prior to such suspension or termination or its obligations to the Superintendent for assessments, fees or administrative actions with respect to the periods before such suspension or termination.

f. *Effect of suspension or termination*. No suspension or termination of an MLO license shall impair or affect the obligations under any preexisting lawful contract between any originating entity of such MLO and any person.

§ 420.9 Renewal of License.

a. *Annual Expiration of license*. Each MLO license issued by the Superintendent under the provisions of Article 12-E of the Banking Law shall terminate annually on the annual expiration date, unless renewed.

b. *Submission of annual request for renewal*. An annual request for renewal of a license as an MLO shall be affirmed by the MLO and submitted electronically in such form and in such manner as may be prescribed by the Superintendent. Instructions for annual renewal of a license shall be available on the Department's website (**www.dfs.ny.gov**).

c. *Annual license fee*. A completed annual request for renewal shall be accompanied by an annual license fee, established by the Superintendent, pursuant to Article 12-E.

d. *Information and documents required*. The annual request for renewal shall include the information and documents referred to in Supervisory Procedure MB 107 as well as such additional information and documents as the Superintendent deems necessary to determine whether the MLO continues to satisfy the standards set forth in Section 599-e of the Banking Law.

§ 420.10 Surrender of license.

a. *Who may surrender.* With the prior approval of the Superintendent, an MLO may surrender a MLO license by delivering to the Superintendent written notice that he or she intends to surrender such license. A MLO license may be surrendered only by the licensed individual named on the license. An originating entity that employs an MLO or with which an MLO is affiliated may not surrender the license of such MLO.

b. *Form of surrender*. The instructions for surrender shall be posted on the Department's website (**www.dfs.ny.gov**)

c. *Civil and criminal liability*. Surrender of an MLO license shall not affect the civil or criminal liability of the MLO or the MLO's originating entity for acts committed prior to such surrender or the obligations to the Superintendent of the MLO or the MLO's originating entity for assessments, fees or administrative actions with respect to the periods before such surrender.

d. *Effect of Surrender*. No surrender of an MLO's license shall impair or affect the obligation of any preexisting lawful contract between any originating entity of such MLO and any person.

§ 420.11 Pre-licensing education requirement.

a. *Condition to Licenses*. Each MLO shall, as a condition of initial licensing under Article 12-E:

    1. Satisfactorily complete requirements as prescribed pursuant to Section 599-f of Article 12-E; and
    2. Submit to the originating entity and the NMLS when directed by the Superintendent proof of completion of the required number of hours of education courses.

b. *Required courses*. A person seeking a license under Article 12-E shall complete at least twenty hours of pre-license education courses, including courses satisfying the following minimum requirements:

    1. Three hours of federal law and regulations;
    2. Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues;
    3. Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and
    4. Three hours of training on applicable New York State law and regulations as may have been approved by the Superintendent as pre-education courses.

c. *Format of courses*.

    1. Inexperienced MLOs. An MLO with less than four years of experience as an MLO must take **only** pre-licensing education courses given in the following formats: (i) a traditional live classroom setting; (ii) fully interactive video or audio conferences, where there is an opportunity for students to ask questions; or (iii) a format where the student cannot advance to the next course without demonstrating his or her comprehension of previous subjects.
    2. Experienced MLOs. In the case of an MLO with four or more years of experience as an MLO half of the required credit hours shall be in given in the following formats: (i) a traditional live classroom setting; (ii) fully interactive video or audio conferences, where there is an opportunity for students to ask questions; or (iii)

a format where the student cannot advance to the next course without demonstrating his or her comprehension of previous subjects. The remaining credit hours may be satisfied in any of the preceding formats or any of the following formats: (i) online programs; (ii) webcasts; (iii) audio and video recordings; (iv) video conferencing; (v) teleconferencing; (vi) computer based learning software; and (vii) live satellite broadcasts.

d. *Proof that MLO has completed pre-licensing education requirements*. No originating entity shall permit any MLO who is required to have completed pre-licensing education requirements pursuant to Article 12-E of the Banking Law to engage in mortgage loan originating until it has received proof of completion of such requirements.

§ 420.12 Approved education providers and courses.

a. *Approved education courses*. For purposes of Sections 420.11 and 420.14 of this Part and Banking Law Sections 500-f and 599-j, pre-licensing education courses and continuing educational courses and the course provider thereof shall have been approved by the NMLS. Pre-licensing and annual educational courses approved by the NMLS for any state shall be accepted towards completion of the educational requirements of New York State, provided that such course, at a minimum, satisfies the requirements of Section 420.11(b) (1), (2) and (3) for pre-licensing education courses, or Section 420.14(b)(1), (2) and (3) for continuing educational courses.

b. *Variances and extensions*. Variances to, or extensions of, the pre-license or continuing education requirements prescribed pursuant to Article 12-E of the Banking Law may be granted by the Superintendent:

    1. For reasons of health certified by an appropriate health care professional;
    2. For extended active duty with the armed forces of the United States; or
    3. For other good cause deemed acceptable by the Superintendent, in his or her sole discretion, which may prevent satisfactory or timely completion of such requirements.

c. *Audit by Superintendent*. The Superintendent or his or her representative may audit at no cost each approved pre-license or continuing education course at any time. If the Superintendent finds that the course does not conform to the requirements of Article 12-E and Part 420.11 or Part 420.14 of this Part, the Superintendent shall notify the NMLS of the deficiencies. If the course provider does not rectify such deficiencies in a timely fashion, the Superintendent shall notify mortgage loan originators, via the Department's website, of the unacceptability of the particular course or courses for compliance with continuing education.

§ 420.13 Pre-license testing requirements.

a. *General requirements.* In order to meet the written test requirement referred to in Article 12-E, an individual shall pass, in accordance with the standards established under Section 599-g of the Banking Law, a qualified written test developed by the NMLS and administered by a test provider approved by the NMLS.

b. *Qualified test.* A written test shall not be treated as a qualified written test for purposes of subdivision one of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

    1. Ethics;
    2. Federal law and regulation pertaining to mortgage origination;
    3. New York State law and regulation pertaining to mortgage origination; and
    4. Federal and New York law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

c. *Testing location*. Nothing in this section shall prohibit a test provider approved by the NMLS from providing a test at the location of the originating entity of the MLO or the location of any subsidiary or affiliate of such entity, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

d. *Minimum competency*. The following conditions apply to individuals taking such competency tests:

    1. An individual shall not be considered to have passed a qualified written test unless the individual shall have achieved a test score of not less than seventy-five percent correct answers to questions;
    2. An individual may retake a test three consecutive times, with each consecutive taking occurring at least thirty days after the preceding test;
    3. After failing three consecutive tests, an individual shall wait at least six months before taking the test again; and
    4. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer, not taking into account any time during which such individual is a registered mortgage loan originator, shall retake the test.

§ 420.14 Continuing educational requirements

a. *Required courses*. In order to meet the annual continuing education requirements referred to in Article 12-E, a licensed mortgage loan originator shall:

    1. Satisfactorily complete, beginning in the year after such individual is licensed, the educational requirements as prescribed pursuant to Section 599-j of the Banking Law; and

2. Submit to the originating entity and the NMLS when directed by the Superintendent proof of completion of the required number of hours of education courses by providing certificates of course completion in the form required by the Superintendent.

b. As a condition to renewing his or her license, an MLO interested shall on an annual basis complete at least 11 hours of continuing education courses, including courses satisfying the following minimum requirements:

    1. Three hours of Federal law and regulations;
    2. Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues;
    3. Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and
    4. Three hours of training on applicable New York State law and regulations as may have been approved by the Superintendent as pre-education courses.

c. *Format of courses*:

    1. Inexperienced MLOs. An MLO with less than four years of experience as an MLO must take all continuing education courses given in the following formats: (i) a traditional live classroom setting; (ii) fully interactive video or audio conferences, where there is an opportunity for students to ask questions; or (iii) a format where the student cannot advance to the next course without demonstrating his or her comprehension of previous subjects.
    2. Experienced MLOs. In the case of an MLO with four or more years of experience as an MLO half of the required credit hours in continuing education courses shall be in given in the following formats: (i) a traditional live classroom setting; (ii) fully interactive video or audio conferences, where there is an opportunity for students to ask questions; or (iii) a format where the student cannot advance to the next course without demonstrating his or her comprehension of previous subjects. The remaining credit Hours may be satisfied in any of the preceding formats or any of the following formats: (i) online programs; (ii) webcasts; (iii) audio and video recordings; (iv) video conferencing; (v) teleconferencing; (vi) computer based learning software; and (vii) live satellite broadcasts.

d. No repeat attendance. No credit shall be earned for repeating any education course for which a student has already earned credit, even if the education course is in a different format or a subsequent time period. This restriction shall not apply to a course that has new content, such as updates to reflect changes in the law or regulations or new court interpretations, or where a course is geared to a more in-depth or advanced treatment of a subject.

e. No course carryover. Continuing education credit may only be earned in the year in which the course is taken. Pre-licensing education credit will not be counted towards continuing education credit.

f. Instructor credits. An MLO who is also approved as an instructor of an approved continuing education course may receive credit toward the continuing education requirement at the rate of two hours of credit for every one hour taught.

g. Proof that MLO has Completed Continuing Education Requirements. No originating entity shall permit any MLO who is required to have completed a continuing education requirement pursuant to Section 599-j of the Banking Law to engage in mortgage loan originating after his or her annual expiration date unless it has received acceptable proof of completion of such requirements.

§ 420.15 Surety bonds

a. Each mortgage loan originator shall be covered by a surety bond in accordance with Section 599-k of the Banking Law. The surety bond of an originating entity may be used to satisfy the mortgage loan originator's surety bond requirement; provided that such surety bond contains coverage for each mortgage loan originator not otherwise covered by a qualifying surety bond in an amount prescribed in subdivision (b) of this section. The surety bond shall be in a form prescribed by the Superintendent.

b. The penal amount of the required surety bond shall be maintained in an amount that reflects the dollar amount of loans originated by the mortgage loan originator as determined by the following requirements:

Required amount of bond	Aggregate $ amount of NY loans originated
$10,000	Less than $1,000,000
$15,000	$1,000,000 to $7,499,999
$25,000	$7,500,000 to $14,999,999
$50,000	$15,000,000 to $29,999,999
$75,000	$30,000,000 to $49,999,999
$100,000	$50,000,000+

The amount of loans originated for this purpose shall be the volume of loans originated in the prior calendar year by the MLO. The MLO or originating entity shall provide proof of the existence of a bond in the requisite amount at the time of each annual renewal of an MLO's license and such other times as requested by the Superintendent. If an originating entity maintains a bond covering its MLOs, such bond shall be in an amount equal to the aggregate of the individual bonds required for all covered MLOs calculated as set forth above; provided, however, that any bond maintained by an originating entity to cover its MLOs is not required to be in excess of (i) $100,000 if the originating entity has less than ten covered MLOs: (ii) $150,000 if the originating entity has ten but no more than fifteen covered MLOs; $250,000 if the originating entity has sixteen but no more than twenty-four covered MLOs; and $500,000 if the originating entity has twenty-five or more covered MLOs. Each originating entity obtaining a bond covering its MLOs also shall deliver to the Department at such time a certification with respect to such bond in the form acceptable to the Superintendent.

c. The Superintendent reserves the right to require the filing of a bond in a penal amount greater than set forth in Subdivision (b) above if the nature or business of an MLO or

originating entity requires in the reasonable judgment of the Superintendent such additional protection for consumers.

d. Immediately upon recovery on any claim or action on or under the bond, the mortgage loan originator or the originating entity as the case may be, shall file a new or supplemental bond restoring the face amount of the bond to the amount required by the Superintendent.

§ 420.16 Reports; permissive challenges by licensees.

a. *Superintendent's reports*. As provided for in Section 599-l of the Banking Law, the Superintendent is required to report to the NMLS at least annually all violations of Article 12-E, as well as enforcement actions and other relevant information requested by the NMLS, subject to the provisions contained in the confidentiality provisions of Section 599-q of the Banking Law.

b. *Permissible challenges*. MLOs may challenge in writing all information entered into the NMLS by the Superintendent. The Superintendent shall modify any such information if he or she in his or her sole discretion shall determine such information is incorrect.

c. *Originating entity reports.* Originating entities employing or having as independent contractors one or more MLOs shall, when required by the NMLS, submit such reports of condition as may be required by the NMLS.

d. *MLO reports*. Each MLO shall submit to the NMLS a report of condition in the format and within the time frame prescribed by the NMLS. An originating entity may file such report in aggregate form, if permitted by the NMLS, provided that such report contains information for all MLOs who originated loans for such entity during the reporting period.

§ 420.17 Calculation and collection of fees.

a. Under Section 599-d of the Banking Law, each applicant for an initial license as an MLO shall pay the fees set forth in paragraphs 1-4 below and an applicant for a license renewal shall pay the fees set forth in paragraphs 4 and 5, all as determined by the Superintendent:

    1. An investigation fee determined in the reasonable estimate of the Superintendent to be the actual cost to the Department to investigate the applicant;
    2. An initial license fee as determined by the Superintendent;
    3. The fingerprint processing fee charged by the State Division of Criminal Justice Services and established pursuant to Article 35 of the Executive Law or such other fee or fees that may be imposed by any entity reviewing the fingerprint cards;
    4. A processing fee that may be charged and collected by the NMLS; and

5. An annual licensing fee.

All fees, including fees payable to the Department by an applicant or licensee, may be collected by the NMLS.

b. The Superintendent has established the following fees:
    1. An investigation fee equal to the Superintendent's reasonable estimate of the actual cost to the Department to undertake the investigation of an applicant
    2. initial license fee based on the annual license fee set forth in subsection (5) below.
    3. The fingerprint processing fee charged by the State Division of Criminal Justice Services and established pursuant to Article 35 of the Executive Law:
    4. Any processing fee that may be charged and collected by the NMLS; and
    5. An annual license fee representing a pro rata share of the Superintendent's reasonable estimate of the cost to the Department of administering this article.
c. The schedule of fees in effect from time to time in accordance with Article 12-E shall be posted on the Department's website (**www.dfs.ny.gov**)

§ 420.18 Duties of originating entity.

a. Each originating entity shall:
    1. By the end of each calendar quarter submit to the Superintendent in written or electronic form a report containing the following:
        i. the names and addresses of each MLO newly employed by, or affiliated as an independent contractor with, such originating entity during such quarter and the effective date of such employment or affiliation; and
        ii. each dismissal for cause of an MLO employed by, or affiliated as an independent contractor with, such originating entity during such quarter, which is due to or based upon an alleged violation of the Banking Law, this Part or any other violation of any applicable federal or state law, rule or regulation and the effective date of such dismissal;
    2. Determine that each individual who becomes employed by, or affiliated as an independent contractor with, such originating entity as an MLO has the character, fitness and education qualifications to warrant the belief that he or she will engage in mortgage loan originating honestly, fairly and efficiently. Each originating entity shall also obtain and maintain in its files such information about each such employee or affiliate upon which such determination was based;

3. Obtain documentation of the satisfactory completion of education courses, pursuant to Sections 599-f and 599-j of the Banking Law, for each MLO employed by or affiliated with such originating entity, which documentation shall be:
    i. in a form acceptable to the Superintendent;
    ii. retained by the originating entity for six years from the date of receipt of such documentation; and
    iii. provided to the Department or the NMLS when directed by the Superintendent;
    iv. ensure that any MLO employed by, or who is an independent contractor of, the originating entity has been duly licensed by the Superintendent to engage in mortgage loan originating activities and that such license has not been terminated or suspended or revoked; and
    v. assign MLOs to locations licensed or registered by the Superintendent, display the license for each MLO working at such location, and ensure that the unique identifier of each MLO performing mortgage loan origination services with respect to a mortgage application is recorded on such application.

b. If an originating entity retains the original proof or record of completion of education courses by an MLO, the originating entity shall provide the original to the MLO, upon request, when the MLO terminates or has terminated his or her employment or affiliation with the originating entity.

§ 420.19 Duties of MLO

a. Except as may be permitted by the Superintendent in writing, a MLO shall not be simultaneously employed or affiliated with more than one originating entity licensed, registered or exempt from licensing pursuant to the provisions of Article 12-D of the Banking Law.

b. Each MLO shall engage in mortgage loan originating activities in a manner such as to command the confidence of the community and to warrant belief that his or her activities are conducted honestly, fairly and free from deceptive practices.

c. Each MLO shall promptly notify the Department of the following:
    1. Change of primary residence address;
    2. Any felony conviction or pending felony charges; any charge of or conviction with respect to a misdemeanor involving financial services or a financial services related business; or any charge or conviction involving fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury; forgery; money laundering or extortion subsequent to initial licensure;
    3. Termination of and/or resignation from employment with an originating entity;

4. The initiation, settlement or resolution of any complaint, action or proceeding brought against him or her by a state or federal governmental unit or self-regulatory organization in connection with a financial services-related activity or business or involving fraud, misrepresentation, consumer deception, larceny, money laundering or perjury; and
5. The initiation, settlement or resolution of any other civil action or proceeding against him or her involving fraud, misrepresentation, larceny or perjury.

d. Each MLO shall obtain course completion certificates evidencing satisfactory completion of the credit hour requirements for each annual renewal period and provide a copy thereof to his or her originating entity, or the NMLS when directed by the Superintendent.

§ 420.20 Prohibited conduct.

a. No MLO shall:
    1. Engage in conduct prohibited under Part 38.7 of the General Regulations of the Banking Board, as applicable;
    2. Continue to engage in Mortgage Loan Originating after receiving notice of the denial of his or her application for a license or notice of the revocation, suspension or termination of his or her license;
    3. Misrepresent his or her license status, or persuade or induce a borrower to apply for a mortgage loan under the belief that such MLO is duly licensed as a mortgage banker or registered as a mortgage broker pursuant to Article 12-D of the Banking Law or an entity exempt from the licensing provisions of Article 12-D;
    4. Publish, advertise or display his or her MLO license in any manner which implies that the MLO is licensed or registered with the New York State Department of Financial Services to engage in mortgage loan originating activities as a mortgage banker or mortgage broker pursuant to Article 12-D of the Banking Law;
    5. Conduct business with any entity or individual which he or she knows or should know is an unlicensed mortgage banker or unregistered mortgage broker not otherwise exempt from the licensing, registration and license requirements of Articles 12-D and 12-E of the Banking Law;
    6. Engage in any transaction, practice, or course of business that is not in good faith or does not constitute fair dealing as required by the character and fitness requirements of Section 599-d of the Banking Law and Sections 592 and 592-a of the Banking Law;
    7. Download or remove borrowers' or mortgage loan applicants' loan files or other information from the premises or automated systems of an originating entity without permission of the originating entity;

8. Publish or advertise its MLO license or unique identifier in any manner which implies that such license or unique identifier can be shared or used by multiple individuals to engage in mortgage loan originating activities in this State;
9. Allow any individual or entity, regardless of whether such individual or entity is registered, or licensed pursuant to Article 12-D or 12-E of the Banking Law, to utilize the MLO's license or unique identifier to engage in mortgage loan originating activities; or
10. Except as may be approved in writing by the Superintendent, simultaneously work for or be affiliated with more than one originating entity.

b. No originating entity or exempt organization shall:

1. Permit any MLO who is subject to any education requirement pursuant to Article 12-E of the Banking Law that is then required to have been completed to engage in mortgage loan originating until acceptable proof or record of completion has been obtained by such originating entity;
2. Permit any MLO subject to the provisions of this Part and Article 12-E of the Banking Law to engage in mortgage loan originating activities when it knows or has reason to know that the MLO's license has been terminated or has been suspended or revoked;
3. Pay compensation for mortgage loan originating activities to an individual who is then required to be licensed as an MLO but has not received such license, or, except as required by law or court order, pay the compensation of a MLO to a individual; other than the individual on the MLO license; or
4. Use the unique identifier of a licensed MLO to process or submit an application taken by any unlicensed individual.

§ 420.21 Administrative action and penalties

a. *Revocation of License*. Pursuant to Section 599-n of the Banking Law, the Superintendent, in addition to the authority provided by subdivision (b) of this section, may revoke any license as a mortgage loan originator if he or she finds that:

1. The licensee has violated any provisions of Article 12-E[, or any rule or regulation promulgated by the Banking Board,] or any rule or regulation prescribed by the Superintendent under and within the authority of Articles 12-D or 12-E or of any other applicable law, rule or regulation of this state or the federal government pertaining to mortgage banking, brokering or loan originating; or
2. Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Superintendent to refuse to issue such initial license.

b. *Good Cause Suspension*

1. The Superintendent may, for good cause, or where there is a substantial risk of public harm, without notice or a hearing, issue an order suspending the license of any mortgage loan originator for a period not to exceed ninety days for investigation. "Good cause", as used in this subdivision, shall exist only when the mortgage loan originator has engaged or engages in dishonest or inequitable practices or practices which demonstrate incompetent mortgage loan originating, which practices may cause substantial harm to the persons afforded the protection of Article 12-D or 12-E of the Banking Law, or the license of the mortgage loan originator was revoked in another state or jurisdiction participating in the NMLS.
2. If the Superintendent has issued an order suspending a license pursuant to this subdivision, such license may be reinstated if the Superintendent determines, in his or her sole discretion after investigation, that good cause therefor did not exist or no longer exists.

c. *Disciplinary action requiring a hearing*. Except as provided in subdivision (b) of this Section or Section 420.8, a license may be revoked or suspended only after notice and a hearing as provided in Supervisory Procedure G111.

d. *Notification of suspension or revocation*. Whenever a license shall have been revoked or suspended in accordance with this section, the Superintendent shall notify the MLO and the affected originating entity that the license has been revoked and that the MLO may not engage in the business of mortgage loan originating in this state.

e. *Restitution*. The Superintendent may order a mortgage loan originator or any other person to pay restitution for violations of Article 12-E or any rules of the [Banking Board or] the Superintendent promulgated hereunder.

f. *Civil and criminal liability*. A revocation of a license in accordance with this Part shall not affect the civil or criminal liability of an MLO or his or her originating entity for acts committed prior to such suspension or termination or its obligations to the Superintendent for assessments, fees or administrative actions with respect to the periods before such suspension, revocation or termination.

g. *Fines*. Pursuant to Section 44 of the Banking Law, the Superintendent may impose a fine against an MLO for any violation of the Banking Law, any regulation promulgated thereunder, any final or temporary order issued pursuant to Section 39 of the Banking Law, any condition imposed by the Superintendent in connection with the grant of any application or request or any written agreement entered into with the Superintendent.

h. *Grounds for disciplinary action*. An MLO may be subject to such disciplinary action as may be determined appropriate by the Superintendent after notice and hearing, except as otherwise provided for in Article 12-E, subject but not limited to the following grounds:

1. Fraud or bribery in securing a license;

2. Making false statements in an application for license, which false statements would have been grounds for rejection of the application;
3. Making of false statement on any form or document requested by the Superintendent for examination or review pursuant to Banking Law and regulations promulgated thereunder;
4. A pattern of conduct indicating incompetence or untrustworthiness;
5. Conviction of any crime which would have a bearing on the fitness or ability of an MLO to engage in mortgage loan originating activities; or
6. Failure to perform his or her duties and responsibilities in an honest, fair and reasonable manner.

i. *Administrative hearings*. Administrative hearings shall be conducted in accordance with Supervisory Procedure G111.

j. *Examinations and Investigations.* For the purpose of discovering violations of Article 12-E or securing information lawfully required by him or her hereunder, the Superintendent may at any time, and as often as he or she may determine, investigate the business and examine the books, accounts, records, and files of every licensee under Article 12-E and any originating entity with which such individual is associated as an employee or independent contractor. For that purpose the Superintendent shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of all such entities. The Superintendent shall have authority to require the attendance of and to examine under oath all persons whose testimony he or she may deem necessary or desirable relative to such business. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the licensee so examined or his or her originating entity. Upon written notice by the Superintendent of the total amount of such assessment, the licensee shall become liable for and shall pay such assessment to the Superintendent.

420.22 Effective date.

This Part will be effective immediately upon adoption.

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

PART 500. INVESTIGATION AND DOCUMENT FEES; BANKING AND NON- BANKING ORGANIZATIONS

Section 500.1. Fees; authority of the superintendent.

(a) Pursuant to section 18 of the Banking Law, the superintendent may establish by regulation the charges for copies of any paper filed in the [Banking] Department and for any certification thereof. The charge for such copies shall be as specified in section 1.2 of Supervisory Policy G 1 of this Title.

(b) Section 18-a of the Banking Law sets forth the fees to be charged for various applications by banking or non-banking organizations as required by the Banking Law. Subdivision six of such section grants discretion to the superintendent to waive or reduce the amount of any such fee, either on a case-by-case basis or generally, pursuant to regulations, with respect to a type of application if the superintendent determines one or more conditions, as specified by such subdivision six, are met. The application fees charged by the [Banking] Department are set forth in section 1.2 of Supervisory Policy G 1 of this Title. Insofar as the fee specified in that section for a particular type of application is less than that set forth in section 18-a of the Banking Law, the superintendent has reduced or waived such fee.

[Changes only to heading. No changes to text necessary – updated through the Emergency Adoption Process]

TITLE 3. BANKING DIVISION
CHAPTER III. SUPERINTENDENT'S REGULATIONS
SUBCHAPTER B. NON-BANKING ORGANIZATIONS

Part 501

(Banking Division Assessments)

Sec.

§ 501.1 Background
§ 501.2 Definitions
§ 501.3 Billing and Assessment Process
§ 501.4 Computation of Assessment
§ 501.5 Penalties/Enforcement Actions
§ 501.6 Effective Date

§ 501.1 Background.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.

The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the

Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 501.2 Definitions.

The following definitions apply in this Part:

a. "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

b. "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:

    1. The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

    2. The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

    3. The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

c. "Industry Group Operating Cost" means the amount of the Total Operating Cost to be assessed to a particular Industry Group. The amount is derived from the percentage of the total expenses for salaries and fringe benefits for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

d. "Industry Group Supervisory Component" means the total of the Supervisory Components for all institutions in that Industry Group.

e. "Supervisory Component" for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or in the case of institutions or entities that are members of the Licensed Financial Services Institution's Group, the applicable sub-group, and the

average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

f. "Industry Group Regulatory Component" means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

g. "Industry Financial Basis" means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group.

   The Industry Financial Basis used for each Industry Group is as follows:

   1. For the Depository Institutions Group: total assets of all institutions in the group;
   2. For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and
   3. For the Licensed Financial Services Providers Group: (i.) for budget planners, the number of New York customers; (ii.) for licensed lenders, the dollar amount of New York assets; (iii.) for check cashers, the dollar amount of checks cashed in New York; (iv.) for money transmitters, the dollar value of all New York transactions; (v.) for premium finance companies, the dollar value of loans originated in New York; and (vi.) for sales finance companies, the dollar value of credit extensions in New York.

h. "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

i. "Industry Group Regulatory Rate" means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

j. "Regulatory Component" for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 501.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 501.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 501.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the BL, the FSL, the State Finance law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, termination or other actions.

§ 501.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State Fiscal Years beginning with the Fiscal