

### **TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE CB 1  
CHARTERING POLICY FOR BANKS AND TRUST COMPANIES  
(Statutory authority: Banking Law, §§ 14[1], 14[1][a])

- 1.1 General statement
- 1.2 Requirements
- 1.3 Limited purpose organizations

Section 1.1 General statement.

The [Banking Board] Superintendent is prepared to charter State banks with or without fiduciary powers, provided: (a) the proposed bank or trust company will promote in a demonstrable and significant way the convenience and advantage of the public; and (b) the proposed management commands confidence and warrants the belief that the business of the bank or trust company will be honestly and efficiently conducted in accordance with the intent and purpose of the New York Banking Law.

1.2 Requirements.

To enhance the likelihood of success of a proposed new bank or trust company, the [Banking Board] Superintendent requires:

- (a) the employment of top management personnel having substantial and satisfactory experience in general commercial bank operations, if the proposed institution will offer significant banking services;
- (b) if a trust company is to be chartered, the employment of top management personnel having substantial and satisfactory experience in fiduciary operations;
- (c) insurance of deposits by the Federal Deposit Insurance Corporation; and
- (d) capital funds of not less than \$1.2 million.

1.3 Limited purpose organizations.

The [Banking Board] Superintendent is receptive to chartering proposals for either a bank or a trust company under which significant commercial bank services may or may not be offered to the public. In the case of a trust company which would not offer significant commercial bank services, proponents must demonstrate to the satisfaction of the [Banking Board] Superintendent that public convenience and advantage would be promoted by the proposed new facility. Any approval of such charter will be conditioned upon such restrictions on doing business that the [Banking Board] Superintendent shall deem necessary and proper to achieve the purposes set forth.

**SUPERVISORY PROCEDURE CB 101**  
CONVERSION OF NATIONAL BANKING ASSOCIATION TO STATE CHARTER

- 101.1 General information
- 101.2 Meeting of stockholders; clearance of name
- 101.3 Application
- 101.4 Documents required
- 101.5 Additional documents
- 101.6 (Reserved)

Section 101.1 General information.

(a) A national banking association which seeks to convert itself into a State-chartered bank or trust company (hereinafter referred to as "the State bank") pursuant to Banking Law, section 136, should, after complying with section 101.2 of this Procedure, submit to the [superintendent]Superintendent a letter application which meets the requirements of section 101.3 of this Supervisory Procedure.

(b) Following submission of the application, the [superintendent]Superintendent may require an examination of the national banking association by State bank examiners before he acts on the application.

(c) Approval of the conversion will be conditioned upon either the continuance by the Federal Deposit Insurance Corporation of insurance of the applicant's deposit accounts to the extent permitted by Federal law or, in the case of a national banking association that does not accept deposits from the general public, the grant by the [Banking Board] [superintendent]Superintendent, pursuant to Banking Law, section 32, of a waiver of the deposit insurance requirement.

101.2 Meeting of stockholders; clearance of name. Before an application for conversion is submitted:

(a) the plan of conversion should be approved by the vote, in person or by proxy, of the holders of at least  $66 \frac{2}{3}$  percent of each class of capital stock of the national banking association at a meeting held in accordance with the requirements of Federal law,\* and (b) the name proposed for the State bank should be submitted to the [superintendent] Superintendent for his prior approval.

101.3 Application.

(a) Six copies of the letter of application, together with the number of copies specified in section 101.4 of this Procedure for the documents therein described, should be submitted to the Superintendent, at the address set forth in section 1.1 of Supervisory Policy G 1,

accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. The letter of application should include:

- (1) the name and address of the officer to whom all communications from the [Banking] Department of Financial Services should be addressed;
  - (2) the dates or proposed dates of filing such documents as may be required with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation; and
  - (3) a request for permission to retain a larger number of directors than the number authorized for State-chartered banks and trust companies pursuant to Banking Law, section 7002, if the number of directors of the national banking association exceeds such number and the applicant seeks to retain one or more directors in excess of the number so authorized.
- (b) The [superintendent]Superintendent reserves the right to require additional information in connection with the application. The applicant may, of course, submit any information in addition to that required by this Procedure which it deems pertinent to the application.

#### 101.4 Documents required.

The following documents should be submitted as part of the application:

- (a) Five executed copies of the plan of conversion, signed in accordance with section 1003(4) of the Banking Law, setting forth the terms and conditions of the conversion, the mode of carrying it into effect and the names of the persons proposed as the principal officers of the State bank. (Pursuant to Banking Law, section 105(5)(a), such plan should stipulate which offices of the converted institution will be continued by it and show the officially designated address of each such office.)
- (b) Five executed copies of the organization certificate in the form required by Banking Law, section 4001.
- (c) Minutes of the meeting of stockholders of the national banking association authorizing the conversion, including the notice of meeting and proxy material submitted to stockholders, certified by the presiding officer and the secretary of the meeting and otherwise in accordance with the requirements of Federal law.\*
- (d) Five executed copies of a certification by the president, secretary or cashier of the national banking association that all steps have been taken which are necessary under Federal law to consummate the conversion.

#### 101.5 Additional documents.

The following additional documents should be submitted to the [superintendent]Superintendent as they become available:

- (a) Copies of all approvals and notices required by Federal law and regulations in connection with the conversion.
- (b) Opinions of counsel for the applicant as to compliance with all requirements of Federal and State law in connection with the conversion.

#### 101.6 (Reserved)

\* 12 U.S.C. §214(a).

### **TITLE 3. BANKING DIVISION**

#### SUPERVISORY PROCEDURE CB 102 AMENDMENTS TO ORGANIZATION CERTIFICATE

- 102.1 General information
- 102.2 Initial submission
- 102.3 Approval; delivery of executed documents
- 102.4 Effective date of amendment

##### Section 102.1 General information.

A bank, trust company, safe deposit company, \*investment company\* or mutual trust investment company\* proposing to amend its organization certificate pursuant to Banking Law, Article XV, should submit a letter application to the [superintendent]Superintendent and stating the reasons therefor.

##### 102.2 Initial submission.

(a) The letter application should be accompanied by a certified copy of a resolution of the applicant's board of directors authorizing the proposed amendment, subject to stockholder approval, and designating the officer or officers to sign all documents and take all necessary action to accomplish the proposed amendment.

(b) As soon as practicable after submission of the letter application, two copies of each of the following documents should also be forwarded to the [superintendent]Superintendent:

- (1) draft-notice of meeting, proxy and any other material to be mailed to stockholders;
- (2) letter, signed by a duly authorized officer, as to compliance with Banking Law, section 6009(9) (relating to persons disqualified to act as proxies);
- (3) draft-resolutions to be presented to the stockholders at the meeting\*\* authorizing the proposed amendment and the execution and delivery to the [superintendent]Superintendent of the certificate of amendment and any other necessary documents; and
- (4) draft-certificate of amendment in form prescribed by Banking Law, section 8005(1).

##### 102.3 Approval; delivery of executed documents.

Upon receipt of notice from the department that the [superintendent]Superintendent has approved the application in principle, the applicant should proceed to obtain the approval of its stockholders. After such approval, the following documents should be submitted to the [superintendent]Superintendent:

(a) two copies of the notice of meeting, proxy and other material mailed to the applicant's stockholders, certified by its secretary as being in the form mailed to the stockholders;

(b) two copies of the resolutions of the applicant's stockholders, certified by its secretary as being in the form adopted by the stockholders; and

(c) five copies of the certificate of amendment, in the form approved by the stockholders, executed and verified as prescribed by Banking Law, section 1003(4).

#### 102.4 Effective date of amendment.

The amendment to the organization certificate becomes effective after the applicant's stockholders and directors have duly approved the certificate of amendment and upon the approval and filing thereof by the [superintendent] Superintendent pursuant to Banking Law, section 1003. For the filing of statements of condition and reports in connection with subsequent sales or distributions of capital stock, see Supervisory Procedure CB 107.

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\* Reference is made to Tax Law, section 180, regarding the tax imposed on such institutions for increases in capital stock.

\*\* If stockholder approval is to be obtained by written consent pursuant to Banking Law, section 6015, then a draft of such consent should be submitted.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE CB 103  
APPLICATION FOR COMMERCIAL BANK BRANCH OFFICES  
(Statutory authority: Banking Law, § 29)

103.1 General information

103.2 Application for community afforded home office protection

Section 103.1 General information.

(a) A bank, trust company, or safe deposit company that seeks permission to open a branch office should file an application therefor with the Superintendent, at the address set forth in section 1.1 of Supervisory Policy G 1, which meets the requirements of this supervisory procedure, accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. The words "branch", "office", and "offices" as used in this supervisory procedure shall include limited purpose branches, but shall not include automated teller machines, point-of-sale terminals or similar facilities.

(b) In accordance with Supervisory Procedure G 106 (Public Access to Banking] Department of Financial Services Records), the entire application and all supporting material are available for public inspection except for confidential material. If the applicant believes that the public availability or disclosure of certain of the information provided would be clearly harmful, such information should be segregated from the public portion and labeled "Confidential." The applicant must also state the reasons under Section 87(2) of the Freedom of Information Law for any request for confidentiality.

(c) The [Banking] Department of Financial Services processes branch applications using either an expedited application process or a standard application process. An institution is eligible for the expedited process if it satisfies all of the following criteria:

- (1) Has a composite CAMELS rating of "1" or "2";
- (2) Has at least a satisfactory ("2") rating for management;
- (3) Is well capitalized in accordance with applicable Federal standards;
- (4) Has a CRA rating of "Satisfactory" or better; and
- (5) Has no major unresolved supervisory issues outstanding (as determined by the [Banking] Department of Financial Services in its discretion). Application requirements are set forth by the Superintendent [of Banks]. Forms and instructions may be obtained directly from the Department, and are available on the Department's Website ([www.banking.state.ny.us](http://www.banking.state.ny.us)).

(d) An application should be filed concurrently with the appropriate Federal supervisory authority if Federal approval is also required. An applicant may submit information to the [Banking] Department of Financial Services by submitting a copy of the appropriate Federal or uniform state application and providing cross-references to the information contained therein. Such Federal or uniform state applications shall be supplemented where neces-

sary to comply with the [Banking] Department of Financial Services' specific application requirements.

103.2 Application for community afforded home office protection.

The [Banking] Department of Financial Services will not accept applications for branch offices in communities from which the applicant would be barred, at the time of filing, under the home office protection provisions of the New York Banking Law provided, however, such a branch application may be accepted for filing if there exists on such date any application with the appropriate regulatory authorities which would, if approved, eliminate the protection provisions of section 105 of the New York Banking Law. No final action will be taken on such branch application until home office protection will have ceased under New York Banking Law.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE CB 105  
APPLICATION FOR APPROVAL OF THE FORMATION OF A BANK HOLDING  
COMPANY; THE EXPANSION OF AN EXISTING BANK HOLDING  
COMPANY; THE VOTING BY A BANK HOLDING COMPANY OF  
THE STOCK OF A BANKING SUBSIDIARY; A MERGER;  
A CONSOLIDATION; OR A PURCHASE OF ASSETS

- 105.1 General information
- 105.2 Information required in the application
- 105.3 Exhibits and documents required
- 105.4 Confidential information

Section 105.1 General information.

(a) A separate application shall be submitted with respect to each action or transaction for which approval is sought and six copies thereof together with all exhibits shall be submitted to the Superintendent at the address set forth in section 1.1 of Supervisory Policy G 1 (Attention: Applications Unit). Each application shall be accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1 if filed pursuant to Banking Law, sections 136, 136-a, 142, 143-a, 601 or 601-a. Inquiries concerning the preparation of an application should be addressed to the Applications Unit of the Banking Department, at the address set forth in section 1.1 of Supervisory Policy G 1.

(b) The statutory period for approval or disapproval of an application submitted pursuant to this Procedure shall commence on the date that the Banking Department shall acknowledge to the applicant that the contents of the application and the required documents and exhibits are acceptable in the form submitted.

(c) The corporate approvals required by the Banking Law and by applicable Federal law with respect to each action or transaction shall be obtained before the application for approval by the Superintendent [superintendent or the Banking Board, as the case may be,] is submitted, except that an application by a bank holding company to vote the stock of a banking subsidiary in connection with a merger or an acquisition of assets must receive approval by the [Banking Board] Superintendent prior to submission of the merger or acquisition of assets proposal to stockholders.

(d) The [superintendent]Superintendent reserves the right to require additional information in connection with the application. The applicants may, of course, submit any information in addition to that required which they deem pertinent to the application.

(e) Unless otherwise indicated, all statistical data required to be submitted in the application (e.g., as to deposits and loans) shall be furnished as of December 31st preceding the date of submission.

(f) The application may be filed in the form that such application is filed with the appropriate Federal supervisory authority, provided permission to so file has been requested in writing from the Commercial Banks Division and such permission has been granted; and provided further that any information, documents or exhibits not required by the

Federal form but required by this Procedure are included in the application or in a supplement or supplements to the application.

105.2 Information required in the application.\* (a) General information. Set forth the name and address of the applicants; the name and address of the officer to whom all communications from the Banking Department should be addressed; the date or proposed date of submission of any required applications or other documents to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation or the Comptroller of the Currency; and include a conformed copy of the plan of merger or acquisition of assets or acquisition of capital stock.

- (b) Banking offices. List the name and address of the principal office of each party to the proposed merger or acquisition and of the surviving bank; the branch office locations of each party; the road distance between the nearest offices of each party and the offices, if any, which will be closed if the application is approved.
- (c) Deposits. (1) Number and volume. List in tabular form the number of accounts and dollar amount of deposits of each party to the transaction, by type of account, as of December 31st for each of the preceding three years.
- (2) Primary and secondary service areas. Indicate the deposits, by number of accounts and dollar amount, which originate in the primary service area and the secondary service area, respectively, of each party. This computation should also be made for any office if the service area thereof is reasonably close to or overlaps any service area of the other party or any of its offices. The term primary service area means the area from which is derived approximately 75 percent of the dollar amount of deposits based on the record addresses of the depositors thereof.\*\* The term secondary service area means the area contiguous to but outside of the primary service area from which is derived approximately an additional 15 percent of the dollar amount of the deposits based on the record address of the depositors thereof.\*\*
- (3) Overlap. Indicate the deposits, by number of accounts and dollar amount, that each party to the transaction draws from the primary and secondary service areas of the other, separately itemized for demand deposits, for savings and other time deposits, and for total deposits.
- (4) Rates. For each party, describe the rates paid on savings and other time deposits and methods of computation. If any of the rates or the methods of computation differ between the parties, include a statement specifically indicating how the differences will be resolved if the application is approved.
- (5) Service charges. For each party, provide a complete schedule of service charges on special checking accounts and on regular checking accounts for individuals and business firms. If any of these charges differ between the parties, include a statement specifically indicating how the differences will be resolved if the application is approved.
- (d) Loans. (1) Breakdown of loans. For each party, list in tabular form for each of the preceding three calendar years the breakdown of all major types of loans outstanding on each December 31st. The breakdown should be by number and dollar amount of loans based on call report classifications (commercial and industrial; real estate; loans to farmers; installment loans to individuals for household, family and other personal expenditures; single payment loans to individuals for household, family and other personal expenditures; etc.).
- (2) Overlap. Indicate the outstanding loans, by number and dollar amount, of each party to borrowers located in the primary and secondary

service areas of the other party, separately itemized for each major type of loan.\*\*\*

(3) Rates. For each party, list the typical loan rates charged for comparable types of loans (for example, unsecured small business loans, other types of business loans, direct automobile instalment loans, one- and two-family conventional mortgage loans, etc.). The rates should be those at which the preponderance of loans of these types are currently being made by the parties. If these rates differ between the parties, include a statement specifically indicating how the differences will be resolved if the application is approved.

(4) Loan policies. For each party, indicate the policies with respect to the maximum maturities and maximum loan-value ratios granted to an "average credit risk" for such types of loans as on new and used cars, mortgage loans on one- and two-family new houses, etc. If any of the policies differ between the parties, include a statement specifically indicating how the differences will be resolved if the application is approved.

(5) Participations. List the loan participations, by number and dollar amount, which each party has originated or participated in during the three preceding calendar years, and the amount of each party's participation. List the participants in each such case.

(6) Loan limits. For each party, indicate the maximum legal loan limits for secured and for unsecured loans. Indicate the volume of loans (by number and dollar amount) which are currently 75 percent or more of each party's loan limit, as well as any unused credit lines exceeding 75 percent of those loan limits.

(e) Trust services. (1) Breakdown. For each party, indicate the volume of business (measured by number of accounts and, wherever possible, dollar volume on a comparable basis) for each of the personal and corporate trust services provided, including voluntary and court trusts, agency and custody accounts, pension and welfare plans, corporate trusteeships, stock transfer agencies, bond and coupon paying agencies, dividend disbursing agencies, etc.

(2) Overlap. Indicate the number and dollar volume of trust business, subdivided by major type, obtained from the primary and secondary service areas of the other party.

(3) Fees. For each party, provide a schedule of fees or charges for trust services. If these differ between the parties, include a statement specifically indicating how the differences will be resolved if the application is approved.

(f) Service areas-economic characteristics. Describe the economic characteristics of each party's primary and secondary service areas and the population and average income, growth trend during the preceding 10-year period, and current economic outlook thereof.

(g) Management. List the names, addresses and titles of the principal officers of each party, including the composition of the board of trustees or board of directors and any advisory or similar committee, indicating the number of each class of shares of each party owned of record, segregated as to individual ownership and joint ownership with others. Provide similar information with respect to the proposed management of the surviving bank.

(h) Management succession problems. If management succession is a problem for any party, indicate specifically what attempts have been made in recent years to recruit management personnel, state how the merger or acquisition is expected to solve the management succession problem, and list the names, ages and salaries of the principal officers of the bank(s) for which management succession is indicated as a prob-

lem, together with a brief summary of the educational background and banking experience of each such officer.

(i) Inducements. State whether any consideration, monetary or otherwise, has been paid, given or offered to any shareholder, director, trustee or officer of any party, or to any other person, as compensation or inducement for assistance in consummating the proposed merger or acquisition, and the details thereof and reasons therefor.

(j) Reasons for approval. Include a separate statement setting forth in detail the reasons why the applicants believe the application should be approved, including a discussion as to (1) whether the proposed merger or acquisition will meet specific needs for banking services in the designated service areas which are not now being met, (2) the competitive consequences of the proposed merger or acquisition within the designated service areas, and (3) the manner in which the proposed merger or acquisition will otherwise serve the public interest.

### 105.3 Exhibits and documents required.

(a) Application for merger or acquisition of assets.

(1) Draft copies of each of the following documents should be submitted to the Commercial Banks Division as soon as practicable after the parties to the proposed merger or acquisition of assets have reached agreement in principle to the proposal:

(a) the plan of merger or acquisition of assets, together with resolutions of the board of directors of each party to the plan approving its terms and conditions. (Pursuant to Banking Law §105-6, such plan should stipulate which offices of each merged or selling institution will be continued by the receiving or acquiring bank and should show the officially designated address of each such office.);

(b) notice of stockholders' meetings, form of proxy, and letter as to compliance with Banking Law §6009(9) (relating to persons disqualified to act as proxies);

(c) letter to stockholders describing the proposal, or a proxy statement as may be required by Federal regulation;

(d) proposed stockholders' resolutions;

(e) oath of inspectors of stockholders' meetings;

(f) reports of inspectors of stockholders' meetings;

(g) certificate of compliance of each party to the plan, as shall be required by Banking Law §§136, 136-a, 601, or 601-a;

(h) Certificate of Amendment of Organization Certificate, if an amendment to the receiving or acquiring bank's charter is to be made.

(2) After the stockholders of the parties to the plan have acted, the following documents are to be submitted to the Superintendent, together with the application:

(a) five executed copies of the plan of merger or acquisition, together with one certified copy of the resolution of the board of directors of each party to the plan approving its terms and conditions;

(b) final copies of: notice of stockholders' meetings; form of proxy; and letter to stockholders or proxy statement;

(c) letter, signed by a duly authorized officer of each party to the plan, as to compliance with Banking Law §6009(9) (relating to persons disqualified to act as proxies);

(d) letter stating that the appropriate Federal supervisory authority has approved the proxy statement if a proxy statement is required;

(e) affidavit of each party to the plan that the required notice of stockholders' meeting, form of proxy, and letter to stockholders, or proxy statement, have been duly mailed to each stockholder; the affidavit should state the date or dates of mailing and that the notice, form

of proxy, and letter or proxy statement were mailed to each stockholder at his address as it appears on the record of stockholders, or, if he shall have filed with the secretary of the corporation a written request that notices to him be mailed to some other address, then directed to him at such other address;

(f) affidavit of publication of notice of stockholders' meetings;

(g) certified copy of the resolution adopted by the stockholders of each party to the plan;

(h) copy of oath of inspectors of stockholders' meeting from each party to the plan;

(i) copy of report of inspectors of stockholders' meeting from each party to the plan;

(j) five executed copies of the certificate of compliance of each party to the plan, as shall be required by Banking Law §§ 136, 136-a, 601 or 601-a;

(k) five executed copies of the Certificate of Amendment of Organization Certificate of the receiving or acquiring bank, effected in accordance with Supervisory Procedure CB 102;

(b) Application by bank holding companies for approval to vote the stock of a bank subsidiary (voting permit application).

(1) Each copy of a voting permit application submitted to the Superintendent should be accompanied by a copy of the related proposed plan of merger or acquisition of assets.

(2) If the voting permit application involves a merger of a national banking association or a State-chartered bank into a State-chartered bank subsidiary, the procedures described in Section 105(3) (a) of this Part "Application for merger or acquisition of assets" should be followed after the [Banking Board] Superintendent has approved the voting permit application.

(3) If the voting permit application involves the merger of a national banking association or a State-chartered bank into a national banking association subsidiary, no documents relative to the merger application are required inasmuch as such application will be submitted to the Comptroller of the Currency for approval after the [Banking Board] superintendent has approved the voting permit application.

(c) Application for approval of the formation of a bank holding company.

(1) The documents required are the same as described in Section 105(3) of this Part "Application for merger or acquisition of assets" except that: the plan referred to shall be a plan of acquisition of capital stock; and the certificates of compliance, as required, shall be executed pursuant to Banking Law § 143-a.

(2) In the event one or more of the banks whose capital stock is to be acquired is a national banking association which will be converted to a State-chartered bank, Supervisory Procedure CB 101 should first be followed.

(3) Pursuant to Banking Law § 144 and Supervisory Procedure CB 118, a newly formed bank holding company shall register as a bank holding company within 180 days after consummation of the acquisition of subsidiary banks.

(d) Application for the expansion of an existing bank holding company.

(1) In the event the bank holding company proposes to acquire a State-chartered bank, the requirements for presentation of documents are the same as described in Section 105 (3) (c) of this Part "Application for approval of the formation of a bank holding company."

(2) In the event the bank holding company proposes to acquire a national banking association which will be converted to a State-char-

tered bank, Supervisory Procedure CB 101 should first be followed.

(3) In the event the bank holding company proposes to acquire the stock of a newly-chartered national banking association (so-called "Phantom bank") for the purpose of merging into it an existing national banking association, a copy of the proposed plan of merger submitted to the Comptroller of the Currency should accompany each copy of the voting permit application of the bank holding company to vote the stock of the "phantom bank" in favor of the merger.

(e) Other exhibits and documents.

(1) \*\*\*\*The latest statements available as of mid-year and December 31 of the assets and liabilities of each party to the plan of merger or acquisition, as reported to the supervisory authorities. (Call Reports)

(2) \*\*\*\*Copies of the income and expense reports of each party (as reported to the supervisory authorities) for each of the three preceding calendar years.

(3) A list of all stockholders who own more than 5% of the stock of each party.

(4) Maps showing the primary and secondary service areas of each party; the location of the respective offices of each of the parties; and the location, except in the case of a service area wholly within New York City, of every commercial bank, savings bank and savings and loan association office located in or near such primary and secondary service areas. A key to office numbers, scale of miles and compass points should be provided.

(5) For bank holding companies only, a copy of the company's balance sheet and profit and loss statement certified by independent public accountants for the past three years, together with a balance sheet and profit and loss statement certified by the chief financial officer of the applicant as of the close of the calendar or fiscal quarter immediately preceding date of application.

(6) Copies of any agreements, in addition to the plan of merger, relating to the merger or acquisition.

(7) Copies of all approvals related to this application obtained pursuant to Federal law and regulations.

(8) Opinions of counsel for each party to the merger or acquisition as to compliance of that party with all requirements of Federal and State law in connection with the merger or acquisition as they become available.

105.4 Confidential information. Information as to the following items should be furnished on separate pages which can be detached from the rest of the application.

(a) any computation of the deposits by number of accounts and dollar amount, according to primary and secondary service areas, for any office of each party to the merger, submitted under Section 105.2(c) (2);

(b) the typical compensating balance (as a percentage of the amount of the loan) expected to be maintained, the extent to which such maintenance is a requirement of the bank, and the statement specifically indicating how any policy differences between the parties on this subject will be received, submitted under Section 105.2(d) (6);

(c) any listing of loan participations and any listing of loan participants, submitted under Section 105.2(d) (8);

(d) any information regarding management succession problems, submitted under Section 105.2(h);

(e) estimate of major categories of assets, deposits and capital accounts and of gross income and expenses, and net earnings or loss for each of the first three years of operation of a proposed new bank,

submitted under Section 105.3(e);

(f) the names of individual depositors, borrowers, and beneficiaries of trusts wherever listed;

(g) names of banks maintaining balances at a subsidiary bank (due to) wherever listed;

(h) any remarks of a derogatory nature or that might otherwise cause harm to a bank or an individual;

(i) should the applicant desire to submit any additional information it deems to be of a confidential nature, such information should be properly identified, separately bound, and labeled "Confidential." The Superintendent will determine whether information submitted as confidential will be so regarded, and will advise the applicant of any decision to make public information furnished on a confidential basis. However, it shall be understood that, without prior notice to applicant, the Superintendent may disclose or comment on any of the contents of the application in his opinion [or in his recommendation to the Banking Board] issued in connection with his decision on the application.

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\* If the applicant is a bank holding company, the information required should be set forth with respect to any of its banking subsidiaries which might reasonably be considered to be in competition with any banking institution which is a party to, or the subject of, the proposed action or transaction.

\*\* The computation may be based on a fair sampling of accounts.

\*\*\* Purchased consumer paper from car, appliance, etc. dealers should be classified by location of dealer; direct consumer loans should be classified by location of consumer.

\*\*\*\* In the case of a proposed new bank, the following should be submitted in lieu of the information requested in items (1) and (2) above:

- (a) Statement as to its proposed capitalization;
- (b) Estimates of major categories of assets, deposits and capital accounts projected for the new bank for each of its first three years of operations; and
- (c) Estimates of gross income and expenses, by major class and net earnings or loss for each of the first three years of operations.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE CB 107

STATEMENTS OF CONDITION RELATING TO SALES AND DISTRIBUTION OF  
CAPITAL STOCK

107.1 General reporting requirement

Section 107.1 General reporting requirement.

Within 10 days after the completion of a sale or distribution by a bank, trust company, safe deposit company, investment company or mutual trust investment company of its capital stock, the issuer should send to the Superintendent, at the address set forth in section 1.1 of Supervisory Policy G 1, two condensed statements of condition, acknowledged by its chief executive or financial officer:

- (a) one, as of the close of business on the day prior to such sale or distribution; and
- (b) the other, as of the close of business on the day thereof.

Each statement should also indicate the number of shares then issued and outstanding.\*

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\* For the procedure to amend an organization certificate to increase the authorized capital stock, see Supervisory Procedure CB 102.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE CB 109  
PERMISSION TO MAKE EXCESS DEPOSITS

- 109.1 General information
- 109.2 Application

Section 109.1 General information.

A bank or trust company that proposes to deposit an amount in excess of 100% of its capital stock, surplus fund and undivided profits with another banking corporation or a private banker should request the Superintendent's permission to make such deposit, in accordance with Banking Law § 106, by submitting a letter application for such permission to the Superintendent, at the address set forth in section 1.1 of Supervisory Policy G 1, specifying the name of the proposed depository and the reasons why the applicant wishes to make such deposit.

109.2 Application.

The letter application should be accompanied by a certified copy of the resolution of the applicant's board of directors authorizing such application and naming the proposed depository. The certification should state that a majority of the applicant's board of directors, exclusive of any director who is an officer, director, trustee or partner of the proposed depository, was present and voted for the resolution at the meeting at which it was adopted.

### TITLE 3. BANKING DIVISION

#### SUPERVISORY PROCEDURE CB 111 APPROVAL OF CAPITAL NOTES AND DEBENTURES

- 111.1 General information
- 111.2 Application
- 111.3 Approval
- 111.4 Subsequent reports

##### Section 111.1 General information.

A bank or trust company that seeks authorization from the Superintendent to issue capital notes or debentures in accordance with Banking Law, section 96(4) should submit a letter application to the Superintendent at the address set forth in section 1.1 of Supervisory Policy G 1 (Attention: Applications Unit), requesting the Superintendent's approval, in principle, of the proposed issue of capital notes or debentures.

##### 111.2 Application.

The letter application should (a) be accompanied by the form of capital note or debenture, the agreement or indenture pursuant to which such notes or debentures are to be issued, and a certified copy of the resolution of the applicant's board of directors approving such issue, the form of note or debenture and the form of agreement or indenture, and designating an officer to submit the application and to take other necessary actions in connection therewith, and (b) include the following information (a cross-reference to the appropriate section of the agreement or indenture may be substituted):

- (1) aggregate dollar amount of the proposed issue;
- (2) interest rate or rates to be paid on the proposed issue (if such rate or rates are not known at the time of application, a maximum rate should be estimated);
- (3) maturity date of the proposed issue or if maturing in series, a schedule of amounts and maturity dates;
- (4) call or prepayment provisions, if any, including the call periods, amounts which may be called therein and call prices. No optional prepayment in whole or in part of the unpaid principal of the notes or debentures may be made without the prior specific approval, in writing, of the [superintendent] Superintendent;

(5) text of any subordination provision of the proposed issue, which should include the following or similar language:

Such obligation shall be junior and subordinate to the obligations of the bank to depositors and other creditors--except any such obligations expressly subordinated or made equal to the notes (debentures)--in that, in case of any receivership, conservatorship, liquidation, dissolution or winding up of the bank (or trust company), whether voluntary or involuntary, all obligations to depositors or creditors--except any expressly subordinated or made equal to the notes (debentures)--shall be paid in full before any payment shall be made on account of the principal or interest on the notes (debentures);

(6) if the proposed notes or debentures are to be convertible into capital stock, the applicant should include a detailed description of the conversion privilege including antidilution provisions, if any;\*

(7) if payment for any part of the proposed issue is to be other than in cash, a complete description of the property proposed to constitute such payment and the value accorded to it by the applicant's board of directors; and

(8) the intended use of the proceeds.

The [superintendent]Superintendent reserves the right to require additional information in connection with a particular application.

111.3 Approval. The applicant may proceed with the proposed issue and sale of the capital notes or debentures upon receipt of a certificate of approval from the [superintendent]Superintendent.

111.4 Subsequent reports. The applicant should advise the [superintendent]Superintendent by letter of the consummation of the sale, including therewith 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. Conversions of capital notes or debentures into shares of capital stock should be reported to the superintendent in accordance with the requirements of Banking Law, section 5016(6).

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\* See Supervisory Procedure CB 102, setting forth the procedure for amending an organization certificate to increase the authorized shares of capital stock.

### TITLE 3. BANKING DIVISION

#### SUPERVISORY PROCEDURE CB 111 APPROVAL OF CAPITAL NOTES AND DEBENTURES

- 111.1 General information
- 111.2 Application
- 111.3 Approval
- 111.4 Subsequent reports

##### Section 111.1 General information.

A bank or trust company that seeks authorization from the Superintendent to issue capital notes or debentures in accordance with Banking Law, section 96(4) should submit a letter application to the Superintendent at the address set forth in section 1.1 of Supervisory Policy G 1 (Attention: Applications Unit), requesting the Superintendent's approval, in principle, of the proposed issue of capital notes or debentures.

##### 111.2 Application.

The letter application should (a) be accompanied by the form of capital note or debenture, the agreement or indenture pursuant to which such notes or debentures are to be issued, and a certified copy of the resolution of the applicant's board of directors approving such issue, the form of note or debenture and the form of agreement or indenture, and designating an officer to submit the application and to take other necessary actions in connection therewith, and (b) include the following information (a cross-reference to the appropriate section of the agreement or indenture may be substituted):

- (1) aggregate dollar amount of the proposed issue;
- (2) interest rate or rates to be paid on the proposed issue (if such rate or rates are not known at the time of application, a maximum rate should be estimated);
- (3) maturity date of the proposed issue or if maturing in series, a schedule of amounts and maturity dates;
- (4) call or prepayment provisions, if any, including the call periods, amounts which may be called therein and call prices. No optional prepayment in whole or in part of the unpaid principal of the notes or debentures may be made without the prior specific approval, in writing, of the [superintendent] Superintendent;

(5) text of any subordination provision of the proposed issue, which should include the following or similar language:

Such obligation shall be junior and subordinate to the obligations of the bank to depositors and other creditors--except any such obligations expressly subordinated or made equal to the notes (debentures)--in that, in case of any receivership, conservatorship, liquidation, dissolution or winding up of the bank (or trust company), whether voluntary or involuntary, all obligations to depositors or creditors--except any expressly subordinated or made equal to the notes (debentures)--shall be paid in full before any payment shall be made on account of the principal or interest on the notes (debentures);

(6) if the proposed notes or debentures are to be convertible into capital stock, the applicant should include a detailed description of the conversion privilege including antidilution provisions, if any;\*

(7) if payment for any part of the proposed issue is to be other than in cash, a complete description of the property proposed to constitute such payment and the value accorded to it by the applicant's board of directors; and

(8) the intended use of the proceeds.

The [superintendent]Superintendent reserves the right to require additional information in connection with a particular application.

111.3 Approval. The applicant may proceed with the proposed issue and sale of the capital notes or debentures upon receipt of a certificate of approval from the [superintendent]Superintendent.

111.4 Subsequent reports. The applicant should advise the [superintendent]Superintendent by letter of the consummation of the sale, including therewith 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. Conversions of capital notes or debentures into shares of capital stock should be reported to the [superintendent] Superintendnet in accordance with the requirements of Banking Law, section 5016(6).

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\* See Supervisory Procedure CB 102, setting forth the procedure for amending an organization certificate to increase the authorized shares of capital stock.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE CB 113  
AUTHORIZATION TO INVEST IN SUBSIDIARY CORPORATIONS

- 113.1 General information
- 113.2 Application
- 113.3 Financial statements
- 113.4 Contributions to capital surplus

Section 113.1 General information.

A savings bank or savings and loan association that seeks authorization, pursuant to Banking Law section 235-d, to invest in the stock of a corporation to be operated as a service corporation should submit a letter application to the Applications Unit of the [Banking] Department of Financial Services, at the address as set forth in section 1.1 of Supervisory Policy G 1.

113.2 Application.

The letter application should (a) be accompanied by a con-formed copy of any stock purchase agreement, the financial statements referred to in section 113.3 of this Supervisory Procedure, and a certified copy of the resolution of applicant's board of directors approving the investment and specifying the number of shares to be purchased and their purchase price, and (b) contain the following information (a cross-reference to the applicable section of a stock purchase agreement may be substituted):

- (1) name of the proposed service corporation;
- (2) a detailed description of its present business, any proposed change in its business, or, if a company is to be formed, a brief description of the business which the proposed service corporation will engage in;
- (3) the location of each of its offices;
- (4) the proposed location of its records;
- (5) brief descriptions of the experience and qualifications of the senior officers of the proposed service corporation and of the officers of the applicant who are to supervise its affairs;
- (6) the purchase price of the stock to be purchased and the manner in which the purchase price is to be paid;
- (7) the number and percentage of the outstanding shares of each class of stock to be purchased;
- (8) the total number of shares, if any, of the proposed service corporation to be purchased, directly or indirectly, by the applicant from officers or directors thereof and the name of and amount to be purchased from each such officer and director;
- (9) the names of any persons other than the applicant who will be major stockholders of the proposed service corporation following the proposed investment, the number of shares to be owned by each such stockholder and his relationship, if any, to the applicant or to any of its officers or directors;
- (10) the amount of any finder's fees, broker's fees or commissions to be paid in connection with the proposed investment, the name of the person or persons to whom payment is to be made and their relationship, if any, to the applicant or to any of its officers or directors;

(11) a statement as to whether the applicant plans to make loans to the proposed service corporation, or guarantee any of its obligations and, in so, the details of any such arrangements;

(12) a statement of the benefits to be realized by applicant as a result of the proposed investment; and

(13) a statement outlining the reasons for this investment which should include objectives, business factors and market information.

113.3 Financial statements. If the proposed service corporation is already in existence, the application should be accompanied by balance sheets and income statements of the proposed service corporation for each of the three fiscal years preceding the date of the application or, the proposed service corporation has subsidiaries or affiliated companies, the application should also be accompanied by (a) consolidated balance sheets and income statements for all such entities and (b) individual balance sheets and income statements for each such subsidiary and affiliated company, in all cases for the same period or periods as those covered by the unconsolidated financial statements of the proposed service corporation.

113.4 Contributions to capital surplus. For the purpose of complying with the requirements of Section 235-d of the Banking Law and Part 85 of the General Regulations of the [Banking Board] Superintendent, an investment by a savings bank or savings and loan association in the capital surplus of a corporation operated as a service corporation shall be deemed to be an investment in the capital stock of such service corporation.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE CB 116  
CONSENT OF SUPERINTENDENT TO  
LEAVE DIRECTOR VACANCIES UNFILLED

116.1 General information

116.2 Application

Section 116.1 General Information.

A bank or trust company which seeks the Superintendent's consent to leave one or more vacancies on its board of directors unfilled pursuant to Banking Law § 7005(1)(b) should submit a letter application to the Superintendent, at the address set forth in section 1.1 of Supervisory Policy G 1 (Attention: Applications Unit).

116.2 Application.

Each letter application should include a statement of the reasons for such application and should be accompanied by a certified copy of the resolution of the applicant's board of directors authorizing such application.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE CB 117

APPLICATION FOR COMPANIES SEEKING TO ACQUIRE  
OR EXERCISE CONTROL OF A BANKING INSTITUTION  
UNDER BANKING LAW, SECTION 143-B

- 117.1 General requirements
- 117.2 Definitions
- 117.3 Information relating to the banking institution
- 117.4 Information required in application filed by corporate or other entities
- 117.5 Information required in application filed by individuals

Section 117.1 General requirements.

(a) Applicability. The instructions set forth in this Supervisory Procedure shall apply:

(1) to the exercise of voting control of any banking institution pursuant to section 143-b of the Banking Law, as such section existed prior to June 30, 1980 if the purchase or other acquisition of such control was consummated prior to June 30, 1980 and was not previously approved by the Superintendent [of Banks or the Banking Board]; and

(2) to the direct or indirect acquisition of control of any banking institution made on or after June 30, 1980 pursuant to section 143-b of the Banking Law, as such section existed on and after June 30, 1980.

(b) Form of application. Six copies of a letter application containing the information, and accompanied by all of the documents, required by this Supervisory Procedure and payment of the fee specified in section 1.2 of Supervisory Policy G 1 shall be submitted to the Superintendent, at the address set forth in section 1.1 of Supervisory Policy G 1.

(c) Request for waivers; commencement of statutory period. All of the information and documents required to be submitted by an applicant pursuant to this Supervisory Procedure shall be supplied to the superintendent, or waivers shall have been granted in accordance with the following procedure, before an application shall be considered complete and shall be accepted by the [superintendent]Superintendent. Requests for waivers of

provisions of this Supervisory Procedure shall be in writing, shall be addressed to the [superintendent]Superintendent and shall state, in reasonable detail,

the basis of the request for the waiver. No provision of this Supervisory Procedure shall be deemed waiver unless written notice of waiver from the [superintendent]Superintendent shall have been issued.

The statutory period for approval or disapproval set forth in section 143-b(1) of the Banking Law, shall commence on the date that the [Banking] Department of Financial Services has received both the applicable filing fee and an application determined by the Banking Department to be complete and prepared in accordance with this Supervisory Procedure.

(d) Item numbers and captions. The information required by this Supervisory Procedure shall be set forth in the order and under item numbers and captions which correspond to the order, item numbers and captions used in the applicable sections of this Supervisory Procedure. If the

information requested in any item is inapplicable, a statement to that effect shall be made.

(e) Incorporation of previously filed reports. If the information required by any item has been given in a sworn application or report filed with the [Banking] Department of Financial Services pursuant to any law or regulation of the department and no additional information is needed to make the information previously filed accurate, complete and up-to-date, the required information may be incorporated by a specific reference to the date and page or pages of the previous filing which contains such information.

(f) Translation of foreign material. All parts of the application, including documents submitted with the application, must be in the English language or complete and accurate translations must be provided.

(g) Conversion of foreign currency. Financial statements of foreign applicants must be presented both in the applicable foreign currency and in United States dollars, and the date and basis of conversion must be stated.

(h) Federal filings. All applicants must submit with their application six copies of any related filings made with any Federal regulatory agency and must continue to supply to the department six copies of each further submission to any of such agencies. Where appropriate, applicants may respond to any item of this Supervisory Procedure by making a reference to any of such filings, provided that a cross-reference sheet is supplied.

(i) Content of application. Except as otherwise provided in a specific written waiver issued by the [superintendent] Superintendent:

(1) an application submitted by an individual shall include the information required by sections 117.3 and 117.5 of this Supervisory Procedure;

(2) an application submitted by a one-bank holding company, as defined in section 117.2. shall include only the information required by section 117.3 of this Supervisory Procedure; and

(3) an application submitted by any other person shall include the information required by sections 117.3 and 117.4 of this Supervisory Procedure. All items of an application submitted by a corporation, partnership or other entity must be answered as to both the applicant and any person which controls the applicant. If such control person is an individual, such individual shall include the information required by sections 117.3 and 117.5 of this Supervisory Procedure.

(j) Execution. Each copy of the application shall be signed by the applicant. If the applicant is a partnership, corporation or other entity, the application shall be signed by a partner or duly authorized executive officer thereof. Each person signing the application shall:

(1) state whether control has been acquired by or tendered to the applicant as of the time of the application is formally submitted for filing;

(2) certify that he will promptly advise the Superintendent [of Banks] of any changes which may occur in the information furnished in the application subsequent to the date upon which the information was furnished; and

(3) subscribe the application and affirm, under penalties of perjury, that he has reviewed the application and that the application does not make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(k) Additional information and in-person conferences. The [superintendent]Superintendent reserves the right to require additional information in connection with the application. The [superintendent]Superintendent may also require that the applicant and any officers, directors and/or representatives of the applicant appear at the [Banking] Department of Financial Services for in-person conferences. The applicant may submit any additional information it deems pertinent to the application.

#### 117.2 Definitions.

For purposes of this Supervisory Procedure: (a) Affiliate means 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) One-bank holding company means a company:

(1) formed by only those persons who control a banking institution for the purpose of holding the stock of such banking institution, which shall be the only banking subsidiary of such company:

(2) which owns, controls or holds with power to vote all of the voting securities, except directors' qualifying shares of such banking institution;

(3) which is required to file an application with the Board of Governors of the Federal Reserve System under the Federal Bank Holding Company Act of 1956, as amended; and

(4) which is required to file an application under Banking Law, section 143-b.

(c) Banking institution refers to the banking institution control of which is sought to be exercised by the applicant.

(d) Banking organization means a State-chartered, Federally-chartered or foreign bank, trust company, private bank, investment company, banking association or bank holding company.

(e) Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a banking institution or other company, whether through the ownership of voting stock of such banking institution or other company, the ownership of voting stock of any company which possesses such power, by contract or otherwise. Control shall be presumed to exist if any person directly or indirectly, owns, controls or holds with the power to vote 10 percent or more of the voting stock of any banking institution or other company or of any company which owns, controls or holds with power to vote 10 percent or more of the voting stock of such banking institution or other company, but no person shall be deemed to control a banking institution or other company solely by reason of his being an officer or director of such banking institution or company.

(f) Person means a corporation, partnership, association or other business entity or a trust or an individual.

(g) Subsidiary means any company, a majority of whose voting stock is directly or indirectly owned, controlled or held with power to vote, by an applicant or by any company owned or controlled by an applicant.

#### 117.3 Information relating to the banking institution.

Information relating to the banking institution control of which is sought to be acquired or exercised by the applicant and on the terms of the proposed transaction.

(a) Names and addresses. Set forth the name and address of the banking

institution control of which is sought to be acquired.

(b) Bank securities owned by applicant. (1) State the total number of outstanding shares of such banking institution and the percentage of such shares, owned, beneficially and/or of record, by:

- (i) the applicant; and
- (ii) each affiliate of the applicant.

(2) State the aggregate unpaid principal amount of any other securities or indebtedness of such banking institution owned, beneficially and/or of record, by:

- (i) the applicant; and
- (ii) each affiliate of the applicant, and set forth a brief description thereof, including any conversion rights attached thereto.

(c) Shares acquired or to be acquired by applicant. With respect to the shares of such banking institution which were or are proposed to be acquired, state:

- (1) the date or dates on which such shares were or are to be acquired;
- (2) the name(s) and address(es) of the person(s) which have acquired or will be acquiring such shares, if an affiliate or affiliates of the applicant have acquired or are to acquire such shares;

(3) the name or names of the parties from who such shares were, or are to be, acquired;

(4) a description of the transaction or transactions in which such shares were or are to be acquired;

(5) the number of shares of stock of each class of stock of the banking institution which were or are to be acquired and the rights inherent in each such class; and

(6) the aggregate purchase price for the shares of stock which were or are to be acquired, stated by class.

(d) Source and amount of funds or other consideration. (1) State the source and amount of funds or other consideration used or to be used in:

(i) acquiring the shares listed in section 117.3(c)(5) of this Supervisory Procedure; and

(ii) paying any finders' fees, legal fees or other expenses borne or to be borne by the applicant or its affiliates in connection with the acquisition of such shares.

(2) State whether any other consideration, monetary or otherwise, has been paid, given or offered to any shareholder or any other party as inducement for assistance in consummating the transaction in which control was or will be acquired and the details thereof.

(3) If any part of the purchase price for the shares acquired or to be acquired, or any part of the expenses of acquisition were represented or are to be represented by funds or other consideration directly or indirectly borrowed, describe the transaction(s) pursuant to which they were or are to be so borrowed and name the parties to the transaction.

(4) Provide copies of any contracts or other documents memorializing any of the arrangements described in section 117.3(d) of this Supervisory Procedure.

(e) Contracts, arrangements or understandings with respect to securities of the banking institution. Describe any contracts, arrangements or understandings between applicant or any affiliate of applicant and any person with respect to any securities of the banking institution, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, guarantees of loans, guarantees against loss or of profits, division of loss or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements or understandings have been entered into and giving the details thereof, and supply copies of all such contracts or documents

memorializing such arrangements or understandings.

(f) The banking institution. (1) State whether, to the best of your knowledge, any other person controls the banking institution.

(2) Describe the purpose or purposes of the acquisition or proposed acquisition of control and the changes, if any, which applicant intends to make in the management and policies of the banking institution. If any management changes are anticipated, provide the same information required by section 117.4(c) of this Supervisory Procedure on any proposed new directors, trustees, partners and principal executive officers.

(3) Describe the extent to which applicant or any affiliate of applicant directs, or intends to direct, the policies of the banking institution relating to investments, loans, bank premises, operations, insurance, personnel, pension and profit sharing plans and dividends.

(4) State the extent to which applicant or any affiliate of applicant supervises or intends to supervise the auditing procedures of the banking institution.

(5) State whether applicant or any affiliate of applicant intends to charge any fees for management services and, if so, the amount thereof and any formula used to arrive at such amount.

(6) State whether applicant or any affiliate of applicant has or has had, or intends to have, a banking or contractual relationship with the banking institution, describe the terms and nature of such relationship(s), and provide copies of any contracts or agreements memorializing any such relationship(s).

(7) Provide copies of all contracts between applicant or any affiliate of applicant and the banking institution or any shareholder or officer thereof not provided in response to any other item of this Supervisory Procedure, including all employment, stock, debenture, note or bond purchase agreements.

(g) Future financing for the banking institution. Describe all sources of financing which would be available to the applicant for future use in connection with the banking institution and the manner and terms on which it would be available to the applicant.

117.4 Information required in applications filed by corporate or other entities.

(a) Name and address of applicant. Set forth the name and address of the applicant and the name and address of the officer or partner to whom all communications from the [Banking] Department of Financial Services should be addressed.

(b) Applicant's business. Describe fully the business of the applicant, each affiliate of the applicant referred to in section 117.3(c)(2) of this Supervisory Procedure, and each other significant subsidiary or affiliate of the applicant, including the name, state or country of incorporation, percentage ownership and business of each such subsidiary and affiliate. The description of business should include, but not be limited to, the following:

(1) a discussion of the general development of the business over the past two years;

(2) a description of the principal services or products and any significant change therein during the past two years;

(3) a list of each customer or group of related customers, which accounts, either singly or in the aggregate, for 10 percent or more of the gross revenues of the business. Indicate whether such customers are directly related to or affiliated with the applicant or its affiliates and if so, how;

(4) a list of the major suppliers of the business. Indicate whether such suppliers are directly or indirectly related to or affiliated with the applicant or its affiliates, and if so, how;

(5) a description of the source and availability of financing, if any, for the business. If any part consists of debt financing, provide the name and address of the lender(s) and describe the maturities and other terms of such financing; and

(6) a breakdown of the gross revenues of the business for the past two years, showing the approximate amount of revenues, before income taxes and extraordinary items, attributable to each line of business which accounted for 10 percent or more of the revenues and/or losses of the business in either of the years covered.

(c) Applicant's directors, partners, etc. (1) List the name, title, citizenship, home address and number and percentage of applicant's shares owned, beneficially and/or of record, by each of applicant's directors and principal executive officer, or, in the case of a partnership, the name, home address and percentage interest therein of each of the partners. If applicant is a corporation, list all other persons owning, beneficially and/or of record, one percent or more of the shares of the applicant.

(2) List, for each director and principal executive officer of the applicant, or if applicant is a partnership, for each of the partners and for each individual controlling any partner, all material occupations, positions, offices or employment during the last 10 years, providing the starting and ending dates of each and the name and address and principal activities of any business, corporation or other entity in which each occupation, position, office or employment was carried on.

(3) State whether or not any of the directors or principal executive officers of the applicant, or if applicant is a partnership, if any of the partners or persons controlling such partners, has been convicted in a criminal proceeding or proceedings (excluding traffic violations) or has been the subject of a bankruptcy proceeding or proceedings, and if so, provide dates, nature of the proceeding(s) or conviction(s), name(s) and location of court(s) and disposition of the matters.

(4) State whether or not any of the directors or principal executive officers of the applicant, or if applicant is a partnership, whether or not any of the partners or persons controlling such partners:

(i) directly or indirectly owns, either beneficially or of record, five percent or more of the equity interests of any banking organization; or

(ii) directly or indirectly controls five percent or more of the equity interests of any banking organization.

If the answer to (i) or (ii) is "yes", identify the director, officer or other person, the banking organization(s) involved, the nature and extent of such ownership and/or control, and the jurisdictions in which the organization(s) are chartered.

(d) Claims. Summarize all:

(1) investigations, and civil and criminal proceedings by any Federal, State, local or foreign governmental agency; and

(2) claims which involve the applicant, each affiliate referred to in section 117.3(c)(2) of this Supervisory Procedure, or any other significant subsidiary or affiliate of the applicant which are currently pending or threatened, and which are either:

(i) material; or

(ii) related to the character of the applicant.

The summary must include the names of the parties, the agencies, courts or other tribunals before which the investigations, proceedings

or claims are pending, if any, the status thereof, and the amount (or a reasonable estimate thereof) involved.

(e) Corporate or partnership documents. With respect to the applicant, each affiliate referred to in section 117.3(c)(2) of this Supervisory Procedure, and any other significant subsidiary or affiliate of the applicant, provide copies of:

(1) In the case of a partnership, the partnership certificate and all amendments thereto duly certified by an appropriate official of the jurisdiction of organization; and the partnership agreement, with all amendments thereto duly certified by a general partner;

(2) In the case of a corporation or other entity:

(i) the certificate of incorporation, charter or other organizational certificate and all amendments thereto, duly certified by the Secretary of State (or other appropriate official of the jurisdiction of organization); and

(ii) a copy of the bylaws, as amended to date, duly certified by an appropriate officer.

(f) Ownership or control of banking organizations. State whether or not the applicant or any affiliate of the applicant:

(1) directly or indirectly owns, either beneficially or of record, five percent or more the equity interest in any banking organization; or

(2) directly or indirectly controls five percent or more of the equity interest in any banking organization.

If the answer to (1) or (2) is "yes", identify the banking organization(s) involved, the nature and extent of such ownership and/or control, and the jurisdiction(s) in which the organization(s) are chartered.

(g) Financial statements. Provide the following financial statements:

(1) Consolidated and consolidating statements of condition as of the last day of each of the three fiscal years immediately preceding the date of the application and consolidated and consolidating statements of income, changes in financial position and changes in shareholders' equity for such three fiscal years for:

(i) the applicant and its subsidiaries; and

(ii) each unconsolidated affiliate of the applicant and its subsidiaries, each accompanied by a report thereon by an independent certified public accountant, stating that such financial statements present the information purported to be shown therein fairly and in conformity with generally accepted accounting principles consistently applied, and stating in the report any exceptions thereto.

(2) A consolidated and consolidating statement of condition as of the last day of the calendar quarter immediately preceding the date of the application and consolidated and consolidating statements of income, changes in financial position and changes in shareholders' equity for the period beginning on the first day of the fiscal year then in progress and ending on such last day, for:

(i) the applicant and its subsidiaries; and

(ii) each unconsolidated affiliate of the applicant and its subsidiaries, accompanied by a report of an independent certified public accountant stating that:

(a) he has reviewed such interim financial statements (indicating the scope of his review); and

(b) on the basis of such review and consultation with the officers of the applicant or the affiliate responsible for financial and accounting matters and such other inquiries as he deems necessary, nothing has come to his attention which, in his judgment, would indicate that:

(1) such interim financial statements were not prepared in accordance

with generally accepted accounting principles consistent with those followed in the preparation of the certified financial statements referred to in section 117.4(g)(1) of this Supervisory Procedure or do not present fairly the information purported to be shown; or

(2) during the period covered by the interim financial statements, there has been any material change in the capital stock or funded debt of the applicant or the affiliate, as the case may be, or of any of their respective subsidiaries.

(3) A copy of the annual reports for each of the two fiscal years ended immediately prior to the date of the application sent to or prepared for the shareholders of:

(i) the applicant;

(ii) each affiliate of the applicant referred to in section 117.3(c)(2) of this Supervisory Procedure; and

(iii) each other significant subsidiary or affiliate of applicant.

(h) Prospective. Copies of the most recent prospectus filed with the Securities and Exchange Commission by:

(1) the applicant;

(2) each affiliate of the applicant referred to in section 117.3(c)(2) of this Supervisory Procedure; and

(3) any other significant subsidiary or affiliate of the applicant.

(i) Banking and securities brokerage firm relationships. (1) Provide a list of all banking organizations and securities brokerage firms with which:

(i) the applicant;

(ii) each affiliate of the applicant referred to in section 117.3(c)(2) of this Supervisory Procedure; and

(iii) each other significant subsidiary or affiliate of the applicant has or within the past five years has had a banking or customer relationship.

The list should summarize the name of each such relationship and indicate the principal office of the banking organization or securities brokerage firm at which the relationship is or was maintained.

(2) Provide a letter addressed to each of the banks or brokerage firms referred to in section 117.3(i)(1) of this Supervisory Procedure authorizing the addressee to provide the [superintendent]Superintendent and his representatives with such financial or other information concerning the applicant and its affiliates as the [superintendent]Superintendent or his representatives may request.

(j) Affiliations chart. Provide a chart clearly presenting the identities of an interrelationships among, the applicant and all affiliates of the applicant. The chart should indicate:

(1) the percentage of voting securities of each person who controls, is controlled by, or is under common control with, the applicant;

(2) if control of any such person is maintained other than by the ownership or control of voting securities, the basis of such control; and

(3) the names of any other persons owning shares of any affiliates of the applicant.

The chart should also indicate, for each person specified in the chart, the type of organization (e.g., corporation, trust, partnership) involved and the state or other jurisdiction of domicile.

117.5 Information required in applications filed by individuals.

(a) Name, address and relatives of applicant.

(1) Set forth the name, citizenship and business and residential addresses of the applicant, indicating the address to which communications from the [Banking] Department of Financial Services should be sent.

(2) Set forth any other names by which the applicant has been known, and the circumstances thereof.

(3) Provide the name of applicant's spouse and all relatives of applicant, by blood or marriage, who, to applicant's knowledge, own or have agreed to acquire stock of the banking institution subject of the application.

(b) Birth date and place. Provide the date and place of birth of the applicant.

(c) Former residences. Provide the addresses of all former residences of the applicant during the last 10 years and the starting and ending dates of such residences.

(d) Education. Provide the names and addresses of all high schools, colleges, universities, graduate programs, technical institutions and professional institutions attended by the applicant, the dates of attendance, any degrees received and the dates of such receipt.

(e) Professional licenses. List all professional licenses or certificates held by applicant, stating the type of license or certificate, the date of issue, the issuing authority and the extent of applicant's activity thereunder.

(f) Employment. (1) State the present principal occupation or employment of the applicant and the name, address and principal business of any enterprise, corporation or other entity in which such employment was carried on.

(2) List all occupations, positions, offices or employment of the applicant during the 10 years preceding the date of the application, giving the starting and ending dates of each and the name, address and principal business of any enterprise, corporation or other entity in which such employment was carried on.

(g) Other activities. Provide the names of any civil, professional or fraternal associations of which applicant is or has been a member at any time during the five years preceding the date of the application, the dates of membership and a description of the activities carried on by such associations.

(h) Applicant's business. Describe fully the applicant's business, including the name, jurisdiction of incorporation, percentage of ownership and lines of business of each corporate or other entity which:

(1) is owned or controlled by the applicant; or

(2) has accounted for 10 percent or more of the gross income of the applicant in either of the last two calendar or fiscal years of the applicant. The description of the business should include, but not be limited to, the following:

(i) a discussion of the general development of the business over the past two years;

(ii) a description of the principal services or products and any significant change therein during the past two years;

(iii) a list of each customer, or group of related customers, which accounts, either singly or in the aggregate, for 10 percent or more of the gross revenues of the business. Indicate whether such customers are directly or indirectly related to or affiliated, with the applicant or its affiliated, and if so, how;

(iv) a list of the major suppliers of the business. Indicate whether such suppliers directly or indirectly related to or affiliated with the applicant or its affiliates, and if so, how;

(v) a description of the source of availability of financing, if any,

for the business. If any part consists of debt financing, provide the name and address of the lender(s) and describe the maturities and other terms of financing; and

(vi) a breakdown of the business, gross revenues for the past two years, showing the approximate amount of revenues, before income taxes and extraordinary items, attributable to each of the businesses which accounted for 10 percent or more of the revenues and/or losses of the business in either of the years covered.

(i) Convictions, bankruptcies, claims and proceedings. (1) State whether or not the applicant has been convicted in any criminal proceeding (excluding traffic violations) or has been the subject of any bankruptcy or similar proceeding, and if so, provide the dates and description of any such conviction or proceeding, the court or tribunal in which the matter was heard and the ultimate disposition thereof.

(2) State whether or not any business with which the applicant has been associated as an officer, director, partner or 10 percent or more shareholder has been:

(i) the subject of any criminal indictment;  
(ii) convicted in any criminal proceeding; or  
(iii) the subject of any bankruptcy or similar proceeding, and if so, provide the date and description of any such proceeding, the court or tribunal in which the matter was heard and the ultimate disposition thereof.

(3) State whether or not the applicant or any business with which the applicant has been associated as an officer, director, partner or 10 percent or more shareholder is the subject of any:

(i) pending or threatened investigation, civil or criminal proceeding by any Federal, State, local or foreign governmental agency; or  
(ii) pending or threatened claim.

Provide a description of the matters disclosed, the names of the agencies or parties involved, the courts or tribunals in which any such matters are pending, the status of the matters and the amounts (or reasonable estimates thereof) involved.

(j) Ownership or control of banking organizations. State whether or not the applicant:

(1) directly or indirectly owns, either beneficially or of record, five percent or more of the equity interests in any banking organization; or

(2) directly or indirectly controls five percent or more of the equity interests in any banking organization.

If the answer to (1) or (2) is "yes", identify the banking organization(s) involved, the nature and extent of such ownership and/or control, and the jurisdiction(s) in which the organization(s) are chartered.

(k) Financial statements of applicant. Provide the following financial statements:

(1) Detailed statements of assets and liabilities of the applicant as of the last day of each of the three calendar or fiscal years of the applicant immediately preceding the date of the application, together with statements of income and changes in financial condition for such three calendar or fiscal years, prepared by an independent certified public accountant in accordance with the Statement on Standards for Accounting and Review Services, No. 1, Compilation and Review of Financial Statements, issued by the American Institute of Certified Public Accountants, as amended, or any statement issued in substitution therefor, and accompanied by review reports on such financial statements prepared by such accountant, stating that based on his review, he is not

aware of any material modifications that should be made to such statements in order for them to be in conformity with generally accepted accounting principles, and stating in the report any exceptions thereto.

(2) A detailed statement of assets and liabilities of the applicant as of the last day of the calendar or fiscal quarter of the applicant immediately preceding the date of the application, together with statements of income and changes in financial condition for the period beginning on the first day of the calendar or fiscal year of the applicant then in progress and ending on such last day, prepared by an independent certified public accountant, and accompanied by a review report on such financial statements prepared by such accountant, stating that based on his review:

(i) nothing has come to his attention which would indicate that such statements were not prepared in accordance with accounting principles consistent with those principles applied in preparation of the annual financial statements provided pursuant to paragraph (1) of this subdivision; and

(ii) he is not aware of any material modifications that should be made to such statements in order for them to be in conformity with generally accepted accounting principles, and stating in the report any exceptions thereto.

(3) Detailed statements of assets and liabilities of the applicant as of:

(i) the last day of the calendar or fiscal year of the applicant immediately preceding the date of the application.

(ii) as of the last day of the calendar or fiscal quarter immediately preceding the date of the application, showing current estimated values, both reviewed by an independent certified public accountant and both accompanied by letters from such accountant stating the scope of his review.

(1) Financial statements of affiliates. For all affiliates of the applicant referred to in section 117.3(c)(2) of this Supervisory Procedure and all other significant affiliates of the applicant, provide the annual and interim financial statements referred to in sections 117.4(g)(1) and (2) of this Supervisory Procedure and the annual reports referred to in section 117.4(g)(3) of this Supervisory Procedure.

(m) Banking and securities brokerage relationships. (1) Provide a list of all banking organizations and securities brokerage firms with which:

(i) the applicant;

(ii) any affiliate of the applicant referred to in section 117.3(c)(2); and

(iii) any other significant affiliate of the applicant has or within the past five years has had a banking or customer relationship.

The list should summarize the nature of each such relationship and indicate the principal office of the banking organization or brokerage firm at which the relationship is or was maintained.

(2) Provide a letter addressed to each of the banking organizations or brokerage firms referred to in section 117.4(m)(1) of this Supervisory Procedure authorizing the addressee to provide the

[superintendent] Superintendent or his representatives with such financial or other information concerning the applicant and his affiliates as the [superintendent] Superintendent or his representatives may request.

(n) Affiliations chart. Provide a chart clearly presenting the identities of, and the interrelationships among, the applicant and all affiliates of the applicant. The chart should indicate:

(1) the percentage of voting securities of each person who controls,

is controlled by, or is under common control with applicant;

(2) if control of any such person is maintained other than by the ownership or control of voting securities, the basis of such control; and

(3) the names of any other persons owning shares of any affiliates of the applicant.

The chart should also indicate, for each person specified in the chart, the type of organization (e.g., corporation, trust, partnership) involved and the state or other jurisdiction of domicile.

(o) References. Provide the names and addresses of at least three personal references.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE CB 118  
REGISTRATION STATEMENT FOR MULTI-BANK HOLDING COMPANIES  
(Statutory authority: Banking Law, § 144)

- 118.1 General information
- 118.2 Filing
- 118.3 Annual reports

Section 118.1 General information. (a) Within 180 days after becoming a bank holding company, as defined in Banking Law, section 141(3), such company shall file a registration statement with the Superintendent [of Banks], providing the following information:

(1) mailing address of the bank holding company to be used in the future (if different from that provided in the application);

(2) date of fiscal year-end of the bank holding company;

(3) parent-only balance sheet of the bank holding company as of the close of business on the date of consummation (balance sheet should be prepared in accordance with generally accepted accounting principles);

(4) number and percent of each class of voting shares of the banks and nonbank subsidiaries owned by the bank holding company at the time of registration;

(5) list of changes, if any, in directors and principal officers and shareholders of the bank holding company since the bank holding company application was filed;

(6) a copy of organization documents of the bank holding company (charters, by-laws, articles of incorporation, trust agreements, etc.), certified by its secretary or other authorized officer, and notarized; and

(7) an organization chart, showing the relationships among the banks, the nonbank subsidiaries, and the parent.

(b) All bank holding companies planning to submit a registration statement are requested to communicate with the New York State [Banking] Department of Financial Services, Domestic Commercial Banks Division, Foreign Commercial Banks Division or Thrift Institutions Division, as the case may be, in advance of filing of such registration statements, to ascertain if any special registration requirements are necessary.

118.2 Filing. The registration statement shall be submitted in duplicate, one of which statements has been certified by the president, a vice-president or secretary of the bank holding company.

118.3 Annual reports. In addition to the requirements of section 118.1 of this Procedure, each bank holding company shall furnish to the department two copies of the report of the company's operations for the fiscal year in which it becomes a bank holding company, and for each year thereafter. The form of such annual report shall be the current form required to be filed under the regulations of the Board of Governors of the Federal Reserve System. The annual report shall be submitted to the department within three months after the end of such company's fiscal year.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE CB 120  
UNDIVIDED PROFITS - DEFINED

(Statutory Authority: Banking Law § 14 [1])

Section 120.1 Undivided profits defined. For purposes of Article III of the Banking Law, the term undivided profits includes paid-in or earned profits (unearned income must be deducted); reserves for loan losses or bad debts; valuation reserves for securities; and reserves for contingencies. It does not include reserves for dividends declared or reserves for taxes, interest and expenses.

**TITLE 3. BANKING DIVISION**

SUPERVISORY POLICY FB 1

LICENSING POLICY FOR BRANCHES, AGENCIES AND REPRESENTATIVE  
OFFICES OF FOREIGN BANKING CORPORATIONS

(Statutory authority: Banking Law, §§14(1), 26, 200)

1.1 General statement

1.2 General standards

Section 1.1 General statement. No foreign banking corporation shall be granted a license to establish and maintain a branch, agency or representative office in this State, unless the Superintendent of Financial Services ("Superintendent") shall have found that: (a) the proposed branch, agency or representative office will promote the public convenience and advantage; and (b) the character, responsibility and general fitness of the foreign banking corporation, its principal shareholders, its management and the person(s) designated to represent such foreign banking corporation are such as to command confidence and warrant belief that the business of such foreign banking corporation will be honestly and efficiently conducted in accordance with the intent and purpose of the New York Banking Law.

1.2 General standards.

(a) In acting on any application to establish and maintain a branch or agency in this state under Banking Law section 26, or a representative office in this state under Banking Law section 221-c, the Superintendent shall consider the following factors:

1. the economic and political stability of the home country of the foreign banking corporation;
  2. the degree to which the foreign banking corporation and any foreign bank of which the foreign banking corporation is a subsidiary is subject to comprehensive supervision and regulation on a consolidated basis by the home country authorities;
  3. whether adequate information will be made available initially on a continuing basis to the Department of Financial Services on the operations and activities of the foreign banking corporation and its affiliates;
  4. the financial strength and resources of the foreign banking corporation (including compliance with international capital guidelines as promulgated by the Bank for International Settlements, the applicant's projected capital position, the history of the applicant's operating performance, and its future prospects);
  5. the integrity, competence and experience (including experience in international banking) of the management and principal shareholders of the foreign banking corporation and the person(s) designated to represent such foreign banking corporation;
  6. the supervisory evaluations of the foreign banking corporation by other regulatory authorities;
  7. the size and significance of the foreign banking corporation in relation to other banking corporations in its home country and worldwide;
- and

8. any other factors the Superintendent deems relevant.

(b) In applying the criteria listed in paragraph (a) above to an application by a foreign banking corporation to establish and maintain a representative office, the Superintendent may take into account the limited nature of the activities that shall be conducted through such representative office.

**TITLE 3. BANKING DIVISION**

SUPERVISORY POLICY FB 2  
REPRESENTATIVE OFFICES OF FOREIGN BANKING CORPORATIONS  
Statutory authority: Banking Law §221-a)

- 2.1 General
- 2.2 Definitions
- 2.3 Permissible activities
- 2.4 Other activities
- 2.5 Prior notice for regional administrative offices
- 2.6 Prior notice for foreign banking corporations with branch or agency
- 2.7 Exemption from licensing and prior notice procedure for establishment of office performing limited administrative function

Section 2.1 General.

No foreign banking corporation may establish, maintain or use a representative office in this State without having first obtained a license from the Superintendent of Financial Services ("Superintendent"). Representative offices of foreign banking corporations that were lawfully registered under article V-B of the Banking Law on or before September 1, 1992 shall be required to obtain a license from the Superintendent to maintain such representative office prior to September 1, 1994.

2.2 Definitions. For purposes of this Supervisory Policy:

- (a) "affiliate" means any company that controls, is controlled by or is under common control with such foreign banking corporation;
- (b) "banking institution" means any entity authorized by its charter to accept deposits and to make loans;
- (c) "control" means the direct or indirect ownership, holding or control with power to vote of 25 percent or more of any class of voting stock or the ability to elect a majority of the directors of a company;
- (d) "foreign banking corporation" means any banking institution organized under the laws of any jurisdiction other than the United States, any state of the United States, the District of Columbia, any territory of the United States or Puerto Rico; and
- (e) "regional administrative office" means any representative office of a foreign banking corporation that
  - (1) is established by a foreign banking corporation that operates one or more branches, agencies, Article XII investment companies or banks in this state;
  - (2) is located in the same city as, but not on the same or contiguous premises (unless held out by the foreign banking corporation or determined by the Superintendent to be a separate office) of, one or more of the foreign banking corporation's branches, agencies, Article XII investment companies or banks in this state; and
  - (3) manages, supervises or coordinates the operations of the foreign bank or its affiliates, if any, in a particular geographic region.
- (f) "representative office" means any place of business located in this state of a foreign banking corporation other than a branch or agency, and any place of business located in this state of an affiliate of a foreign banking corporation that engages in representational functions (including, but not limited to, soliciting business, marketing services

or acting as liaison with customers other than as an accommodation to customers of such affiliate) on behalf of the foreign banking corporation in connection with its banking activities; including a place of business in this state of a foreign banking corporation at which location the foreign banking corporation engages solely in limited administrative functions in connection with its banking activities that do not involve contact or liaison with customers or potential customers (such as back office support systems).

### 2.3 Permissible activities.

(a) The activities that may be conducted by a representative office of a foreign banking corporation in this State on behalf of such foreign banking corporation shall be limited to the following:

(1) solicitation of loans in principal amounts of \$250,000 or more and, in connection therewith, assembly of credit information, making of property inspections and appraisals, securing of title information, preparation of applications for loans (including making recommendations with respect to action thereon);

(2) solicitation of purchasers of loans from the foreign banking corporation;

(3) solicitation of parties to contract with the foreign banking corporation for the servicing of its loans;

(4) solicitation of other banking business on behalf of the foreign banking corporation, except for solicitation of deposits or deposit-type liabilities;

(5) conduct of research;

(6) acting as liaison with customers of the foreign banking corporation;

(7) acting as liaison with correspondents of the foreign banking corporation;

(8) execution of loan documents for loans in principal amounts of \$250,000 or more pursuant to specific written authorization with respect to each such loan;

(9) in the case of regional administrative offices, manage, supervise or coordinate the operations of the foreign bank or its affiliates, if any, in a particular geographic region, including credit approvals; and

(10) any other activity approved in writing by the Superintendent.

(b) Notwithstanding the foregoing, a representative office may not engage in a banking business or trading activities for the account of the foreign banking corporation, or, on behalf of the foreign banking corporation, make final credit decisions (except in the case of a regional administrative office), execute documents for or solicit loans in principal amounts of less than \$250,000, disburse funds, transmit funds, accept loan repayments or solicit, accept or contract for deposits or deposit-type liabilities.

2.4 Other activities. A foreign banking corporation seeking written approval of the Superintendent to engage in an activity not listed in Section 2.3(a)(1)-(9), or otherwise prohibited under Section 2.3(b), of this Supervisory Policy shall submit a letter application to the Superintendent setting forth a description of the proposed activity and a detailed explanation of why the representative office should be permitted to engage in such activity.

### 2.5 Prior notice for regional administrative offices.

A foreign banking corporation may, unless otherwise advised by the Superintendent, obtain a license to establish a regional administrative

office in this State with 45 days prior written notice to the Superintendent. If a foreign banking corporation maintaining a licensed branch, agency, Article XII investment company or bank in this state is performing a regional administrative office function on the same or contiguous premises as the licensed or chartered entity of the foreign banking corporation, the foreign banking corporation shall provide written notice to the Superintendent of such fact and the particular regional administrative office functions performed and shall identify relevant regional office personnel. No separate license for those regional administrative office functions will be issued, unless the regional administrative office functions are either held out by the foreign banking corporation or determined by the Superintendent to be separate from the other functions taking place on the premises. The foreign banking corporation shall notify the Superintendent within 45 days of any change in regional administrative functions or personnel.

2.6 Prior notice for foreign banking corporations with branch or agency. A foreign banking corporation which maintains a New York state-licensed branch or agency may, unless otherwise advised by the Superintendent, obtain a license to establish a representative office in this state with 45 days prior written notice to the Superintendent.

2.7 Exemption from licensing and prior notice procedure for establishment of office performing limited administrative function. Unless otherwise advised by the Superintendent, a foreign banking corporation not otherwise maintaining a licensed branch or agency in this state may, with 45 days prior written notice to the Superintendent, establish a place of business of the foreign banking corporation in this state at which location the foreign banking corporation engages solely in limited administrative functions (such as back office support systems) in connection with its banking activities that do not involve contact or liaison with customers or potential customers. Unless otherwise advised by the Superintendent, if a foreign banking corporation already maintains a licensed branch or agency in this state it may establish an office that engages solely in limited administrative functions in connection with its banking activities that do not involve contact or liaison with customers or potential customers (such as back office support systems), by notifying the Superintendent within 45 days of establishing such office.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE FB 101  
APPLICATION BY A FOREIGN BANKING CORPORATION FOR  
A LICENSE TO ESTABLISH A BRANCH OR AGENCY  
(Statutory authority: Banking Law, §14(1))

- 101.1 General information
- 101.2 Prior consultation
- 101.3 Information and documents requested
- 101.4 Conversion of license from agency to branch, or branch to agency
- 101.5 Additional branches and agencies

Section 101.1 General information.

A foreign banking corporation seeking a license under Banking Law, Article V, to establish an initial branch or agency in New York State shall submit to the Superintendent of Financial Services ("Superintendent") an application on Form FB-101 containing the information and documents required by section 101.3 of this Supervisory Procedure, accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1.

101.2 Prior consultation.

Preparation of the application on Form FB-101 will be facilitated by prior consultation between the applicant and representatives of the [Banking] Department of Financial Services ("Department"). Arrangements for such a conference may be made and copies of Form FB-101 may be obtained through the Foreign and Wholesale Banks Division of the [Banking] Department, at the address set forth in section 1.1 of Supervisory Policy G 1.

101.3 Information and documents requested.

A foreign banking corporation seeking a license to establish a branch or agency must submit the following information and documents:

- (a) an application certificate in duplicate containing the information required by Banking Law section 201;
- (b) the names of and biographical information, including a description of the educational and business background, for the two senior officers who will be in charge of the branch or agency;
- (c) a description of the history and background of the foreign banking corporation, including the following:
  - (1) history of the foreign banking corporation;
  - (2) ranking by asset size in the home country;
  - (3) number of offices in the home country;
  - (4) description of organization structure of the foreign banking corporation (including shareholders directly or indirectly owning or controlling 10 percent or more of the capital stock of the applicant, any of its affiliates and any agencies, branches or representative offices of the applicant in the United States and other countries);
  - (5) description of management structure, including board of directors and principal officers of the foreign banking corporation;
  - (6) description of the business of the foreign banking corporation;
- (d) an organization chart for the foreign banking corporation and its top tier parent, if any, showing all affiliated companies and the place

where each company is organized;

(e) background and financial information on shareholders directly or indirectly owning or controlling 10 percent or more of the capital stock of the applicant;

(f) financial statements:

(1) a consolidated statement of the applicant's financial condition as of a date within 90 days prior to the date of application, certified by the applicant's chief executive or financial officer;

(2) audited consolidated financial statements, including statements of income and expense, for the applicant's latest three fiscal years or for the period that applicant has been in business if less than three years, certified by the applicant's chief executive or financial officer, with amounts to be shown in the applicant's local currency and the United States dollar equivalent; and

(3) calculation of applicant's risk-based capital ratio; and

(4) an English language copy of the applicant's latest annual report;

(g) an analysis of loans, including, but not limited to, information on delinquencies, non-accrual loans, assets acquired in satisfaction of debts previously contracted, and loans with reduced interest charges;

(h) an analysis of the extent of country risk exposure of the applicant;

(i) a list of the major United States and other correspondent bank relationships of the applicant, a list of United States and other banks which have extended any lines of credit to the applicant and the amount of such lines;

(j) a profile of the home country including a description of:

(1) political and economic structure;

(2) economic ties with Export-Import Bank, International Monetary Fund, World Bank and other similar organizations;

(3) foreign trade, including balance of payments with the United States and other countries; and

(4) foreign exchange restrictions;

(k) a description of the bank regulatory system in the home country of the foreign banking corporation and, if different, any top tier foreign banking corporation that owns or controls the applicant, addressing in each case:

(1) the extent to which each foreign banking corporation is subject to comprehensive supervision or regulation on a consolidated basis by its home country authorities, including whether each foreign banking corporation is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign banking corporation (including the relationships of the foreign banking corporation to any affiliate) to assess the foreign banking corporation's overall financial condition and compliance with law and regulation;

(2) the powers and functions of the home country authorities;

(3) the frequency and scope of supervisory examinations of banking institutions;

(4) the function of the Central Bank and its relationship to private banking institutions in the home country;

(5) the deposit insurance system, if any, in the home country; and

(6) the extent to which banking institutions from other countries are permitted to conduct business in the applicant's home country;

(1) a statement from the home country authorities that:

(1) such authorities do not object to the establishment of the proposed branch or agency; and

(2) the foreign banking corporation is duly organized and licensed to

conduct a general banking business and is in good standing;

(m) a description of the types of business to be conducted and the types of services to be offered at the proposed branch or agency;

(n) estimated start-up costs, projected balance sheets, income statements and contingent liabilities for the proposed branch or agency for the first three years of operations, including assumptions made in formulating projections;

(o) description of management and staffing of office, including number of persons to be employed and in what capacities and names and brief biographies of key personnel;

(p) a certified copy of resolutions of applicant's board of directors either sworn to before a United States Consular Official or, where the applicant's country of origin is a party to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, accompanied by an apostille as provided in Supervisory Procedure G7 of this Title:

(1) authorizing the filing of the application and designating the officer who is to sign the application;

(2) designating the person or persons who is/are to be in charge of the business and affairs of the branch or agency or who shall be authorized to appoint such person or persons;

(3) authorizing the appointment of the Superintendent as true and lawful attorney for service of process; and

(4) authorizing the designation of the person to whom process may be forwarded by the Superintendent;

(q) a duly executed instrument appointing the Superintendent the applicant's true and lawful attorney for the service of process;

(r) a certificate of designation, specifying the name and address of the person to whom process may be forwarded by the Superintendent;

(s) an affidavit of the proposed manager and deputy manager describing any legal proceedings against each of them;

(t) two duly authenticated copies of applicant's charter and bylaws or the equivalent thereof;

(u) an opinion of a member of the bar of the applicant's home country that:

(1) applicant's charter authorizes it to carry on the business contemplated by the application; and

(2) the application complies with the laws of the applicant's home country;

(v) a certificate signed by a senior executive officer of the applicant certifying that the applicant is conducting its business as authorized by its charter and bylaws and in compliance with the laws of the applicant's home country;

(w) a statement containing factual data to demonstrate that the public convenience and advantage will be promoted by approval of the application, including at a minimum:

(1) rationale for wishing to establish a branch or agency in New York State;

(2) description of the manner in which New York State and the general public will be better served as a result of the establishment of the proposed office;

(3) description of the manner in which the proposed office will contribute to the promotion of international trade; and

(4) description of the competitive effect of the proposed office on existing banking facilities in New York;

(x) a certificate of the applicant's paid-in capital stock, surplus fund and undivided profits, expressed in each case in the currency of

the country of origin and in United States dollars, based on the current conversion rate;

(y) a statement from the foreign banking corporation providing the Superintendent with adequate assurances that information will be made available to the Superintendent on the operations or activities of the foreign banking corporation and any of its affiliates that the Superintendent deems necessary to determine and enforce compliance with applicable New York State laws and regulations; and

(z) such additional documents or information as the Superintendent may require.

101.4 Conversion of license from agency to branch, or branch to agency.

When an agency applies to convert to a branch, or when a branch applies to convert to an agency, the information and documentation required for an initial license in sections 101.3(a), (l), (m), (p), (q), (r), (u), (v), (w) and (z) of this Supervisory Procedure shall be submitted to the Department.

101.5 Additional branches and agencies.

A foreign banking corporation that has received a license to open and maintain a branch or agency in this State may, unless otherwise advised by the Superintendent, open and occupy an additional branch or agency with 30-days prior notice to the Superintendent. Such notice shall contain the information required under section 101.3 (b), (l) through (s), (w) and (z) of this Supervisory Procedure.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE FB 102  
APPLICATION BY A FOREIGN BANKING CORPORATION FOR  
A LICENSE TO ESTABLISH OR MAINTAIN A REPRESENTATIVE OFFICE  
(Statutory authority: Banking Law, §221-c)

- 102.1 General information
- 102.2 Prior consultation
- 102.3 Information and documents requested
  
- 102.4 Prior notice for regional administrative offices
- 102.5 Foreign banking corporations with branch or agency
- 102.6 Notice for establishment of an office performing limited administrative functions

Section 102.1 General information.

A foreign banking corporation seeking a license under Banking Law, article V-B and Supervisory Policy FB 2, to establish, maintain or use a representative office in New York State shall submit to the Superintendent of Financial Services ("Superintendent") an application on form FB-102, or written notification as appropriate, containing the information and documents required by section 102.3 of this Supervisory Procedure, or written notification as appropriate, accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1.

102.2 Prior consultation.

Preparation of the application on Form FB-102 will be facilitated by prior consultation between the applicant and representatives of the [Banking] Department of Financial Services ("Department"). Arrangements for such a conference may be made through the Foreign and Wholesale Banks Division of the [Banking] Department, at the address set forth in section 1.1 of Supervisory Policy G 1.

102.3 Information and documents requested.

A foreign banking corporation seeking a license to establish or maintain a representative office must submit the following information and documents:

- (a) the name and principal place of business of such foreign banking corporation;
- (b) the place where the proposed representative office will be located;
- (c) the names of and biographical information, including a description of the educational and business background, for any person(s) who shall act as representative(s) of the corporation;
- (d) a description of the history and background of the foreign banking corporation, including the following:
  - (1) brief history of the foreign banking corporation;
  - (2) ranking by asset size in the home country;
  - (3) number of offices in the home country;
  - (4) description of organization structure of the foreign banking corporation (including shareholders directly or indirectly owning or controlling 10% or more of the capital stock of the applicant, its affiliates and any agencies, branches or representative offices of the

applicant in the United States and other countries);

(5) description of management structure, including board of directors and principal officers of the foreign banking corporation;

(6) description of the business of the foreign banking corporation;

(e) an organization chart for the foreign banking corporation and its top tier parent, if any, showing all affiliated companies and the place where each company is organized;

(f) financial statements:

(1) a consolidated statement of the applicant's financial condition as of a date within 90 days prior to the date of application, certified by the applicant's chief executive or financial officer;

(2) audited consolidated financial statements, including statements of income and expense, for the applicant's latest three fiscal years or for the period that applicant has been in business if less than three years, certified by the applicant's chief executive or financial officer, with amounts to be shown in the applicant's local currency and the United States dollar equivalent;

(3) calculation of applicant's risk-based capital ratio; and

(4) an English language copy of the applicant's latest annual report;

(g) an analysis of loans, including, but not limited to, information on delinquencies, non-accrual loans, assets acquired in satisfaction of debts previously contracted, and loans with reduced interest charges;

(h) an analysis of the extent of country risk exposure of the applicant;

(i) a list of the major United States and other correspondent bank relationships of the applicant, a list of United States and other banks which have extended any lines of credit to the applicant and the amount of such lines;

(j) a profile of the home country including a description of:

(1) political and economic structure;

(2) economic ties with Export-Import Bank, International Monetary Fund, World Bank and other similar organizations;

(3) foreign trade, including balance of payments with the United States and other countries; and

(4) foreign exchange restrictions;

(k) a description of the bank regulatory system in the home country of the applicant and, if different, any top tier foreign banking corporation that owns or controls the applicant, addressing in each case:

(1) the extent to which the foreign banking corporation is subject to comprehensive supervision or regulation on a consolidated basis by its home country authorities, including whether each foreign banking corporation is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign banking corporation (including the relationships of the foreign banking corporation to any affiliate) to assess the foreign banking corporation's overall financial condition and compliance with law and regulation;

(2) the powers and functions of the home country authorities;

(3) the frequency and scope of supervisory examinations of banking institutions;

(4) the function of the Central Bank and its relationship to private banking institutions in the home country;

(5) the deposit insurance system, if any, in the home country; and

(6) the extent to which banking institutions from other countries are permitted to conduct business in the applicant's home country;

(1) a statement from the home country authorities that:

(1) such authorities do not object to the establishment of the

proposed representative office; and

(2) the foreign banking corporation is duly organized and licensed to conduct a general banking business and is in good standing;

(m) a description of the types of activities to be conducted and, if applicable, the types of business to be solicited at the proposed representative office;

(n) a description of the staffing of the office and the manner in which the office will be supervised by the applicant, including number of persons to be employed, their capacities and names and brief biographies of the representative(s) and other key personnel;

(o) a certified copy of resolutions of applicant's board of directors either sworn to before a United States Consular Official or, where the applicant's country of origin is a party to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, accompanied by an apostille as provided in Supervisory Procedure G 7 of this Title:

(1) authorizing the filing of the application and designating the officer who is to sign the application;

(2) designating the person or persons who is/are to be the representative(s) of the applicant or who shall be authorized to appoint such person or persons;

(3) authorizing the appointment of the Superintendent as true and lawful attorney for service of process; and

(4) authorizing the designation of the person to whom process may be forwarded by the Superintendent;

(p) a duly executed instrument appointing the Superintendent the applicant's true and lawful attorney for the service or process;

(q) a certificate of designation, specifying the name and address of the person to whom process may be forwarded by the Superintendent;

(r) an affidavit of the proposed representative(s) describing any legal proceedings against him or her;

(s) two duly authenticated copies of applicant's charter and bylaws or the equivalent thereof;

(t) an opinion of a member of the Bar of the State of New York stating that the activities of the proposed representative office are in compliance with section 221-a(3) of the Banking Law and Supervisory Policy FB 2;

(u) an opinion of a member of the bar of the applicant's home country that:

(1) applicant's charter authorizes it to conduct the activities permitted to the proposed representative office; and

(2) the application complies with the laws of the applicant's home country;

(v) a certificate signed by a senior executive officer of the applicant certifying that the applicant is conducting its business as authorized by its charter and bylaws and in compliance with the laws of its home country;

(w) a statement containing factual data to demonstrate that the public convenience and advantage will be promoted by approval of the application, including the applicant's rationale for wishing to establish a representative office in New York State;

(x) a statement from the foreign banking corporation providing the Superintendent with adequate assurances that information will be made available to the Superintendent on the operations or activities of the foreign banking corporation and any of its affiliates that the Superintendent deems necessary to determine and enforce compliance with applicable New York State laws and regulations; and

(y) such additional documents or information as the Superintendent may require.

102.4 Prior notice for regional administrative offices.

The notice required by Section 2.4 of Supervisory Policy FB 2 for establishing a regional administrative office shall contain the information required under Section 102.3(a)-(c), (m)-(n), (p)-(r), (u) and (y) of this Supervisory Procedure.

102.5 Foreign banking corporations with branch or agency.

The notice required by Section 2.5 of Supervisory Policy FB 2 for a foreign banking corporation currently maintaining a New York state-licensed branch or agency to obtain a license to establish a representative office in New York State shall contain the information required under Section 102.3 (a)-(c), (l)-(r), (t)-(w) and (y) of this Supervisory Procedure.

102.6 Notice for establishment of an office performing limited administrative functions. The notice required by Section 2.7 of Supervisory Policy FB 2 for establishing an office performing limited administrative functions shall contain the following information:

- (a) the name and address of the foreign banking corporation;
- (b) the location in New York of the office performing limited administrative functions and the office(s) of the bank for which the New York office is performing the limited administrative functions;
- (c) the activities of the New York office;
- (d) a description of the staffing of the New York office; and
- (e) any additional material as requested by the Superintendent.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE FB 103  
AUTHORIZATION OF FIDUCIARY POWERS FOR FOREIGN  
BANKING CORPORATIONS

(Statutory authority: Banking Law §201-b)

- 103.1 General statement
- 103.2 General criteria
- 103.3 Application
- 103.4 Application of other regulations

Section 103.1 General statement. Pursuant to the provisions of section 201-b of the Banking Law, the Superintendent of Financial Services ("Superintendent") is prepared to authorize a New York State-licensed branch or agency of a foreign banking corporation to exercise any or all of the powers specified in sections 100, 100-a, 100-b and 100-c of the Banking Law, in accordance with applicable law.

103.2 General criteria.

In passing upon an application pursuant to section 201-b of the Banking Law, the Superintendent will consider, in addition to any other facts or circumstances deemed proper, the following:

- (a) the financial condition of the applicant;
- (b) the qualifications and experience of the proposed officer or officers of the trust operation, and the nature of the supervision to be exercised over the fiduciary activities;
- (c) the type or types of fiduciary activities proposed to be undertaken; and
- (d) the plan of the applicant's trust operation, including information as to the manner in which legal, accounting, investment and recordkeeping functions of such operation are to be performed, and information as to any plans to obtain related services from outside sources.

103.3 Application. (a) An application for authority to exercise fiduciary powers shall be submitted in letter form and shall contain, in reasonable detail, information concerning the personnel and operations of the proposed trust operation as described in section 103.2(b)-(d) of this Supervisory Procedure.

(b) In addition, applicant shall furnish an opinion of counsel:

- (1) that the laws of the country in which the bank is incorporated, as well as the bank's articles of incorporation or similar document, empower the bank to engage in the type or types of fiduciary activities proposed to be undertaken;
- (2) that the bank has taken all necessary actions, corporate or otherwise, as are necessary to authorize the filing of such application and to permit its personnel to undertake fiduciary engagements in New York; and
- (3) that the written appointment of the Superintendent as attorney for service of process, and the written designation relative thereto, having been filed with the Superintendent pursuant to Banking Law, section 200(3), extend to transactions involving the bank as fiduciary.

103.4 Application of other regulations. The provisions of Supervisory Procedure CB 119 of this Title shall apply to any branch or agency of a

foreign banking corporation which proposes to establish a common trust fund, and the provisions of Part 22 of this Title shall apply to any such licensee maintaining such a fund. The terms trust company and board of directors, as used in CB 119 and Part 22 of this Title, shall be deemed to refer to the trust operation of the licensed New York branch or agency and the board of directors of the licensee foreign banking corporation, respectively.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE FB 104  
APPLICATION BY A FOREIGN BANKING CORPORATION FOR  
PERMISSION TO CHANGE ITS NAME  
(Statutory authority: Banking Law, §203(2))

104.1 General information

104.2 Information and documents required

Section 104.1 General information. A foreign banking corporation maintaining a New York State-licensed branch, agency or representative office that proposes to change its name shall submit a letter application to the Superintendent of Financial Services.

104.2 Information and documents required. The letter application required pursuant to Section 104.1 of this Supervisory Procedure shall contain a description of the reasons for and indicate the effective date of such change of name and shall be accompanied by certified copies (with translation into English if applicable) of:

(a) Resolutions adopted by the foreign banking corporation's board of directors authorizing the change of name; and

(b) A statement from the home country authorities that such authorities approve or do not object to the change of name.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE FB 105  
PROCEDURE FOR A FOREIGN BANKING CORPORATION FOR A CHANGE OF  
MANAGER, DEPUTY MANAGER  
REPRESENTATIVE OR INDIVIDUAL DESIGNATED TO RECEIVE  
PROCESS

(Statutory authority: Banking Law, §200)

105.1 General information

105.2 Documents required

Section 105.1 General information.

A foreign banking corporation maintaining a New York State-licensed branch, agency or representative office that proposes to change its manager, deputy manager, representative or individual designated to receive process, shall submit a letter to the Superintendent of Financial Services ("Superintendent") indicating the name(s) of the individual(s) to whom such change is being made.

105.2 Documents required.

The letter shall be accompanied by:

(a) A certified copy of the resolution of the foreign banking corporation's board of directors (accompanied by a translation into English if applicable) sworn to before a United States Consular Official (or accompanied by an apostille):

(1) authorizing designation of the person who is to be in charge of the business and affairs of the branch or agency, or named as the representative of the bank, and/or authorizing designation of the officer to whom process may be forwarded by the Superintendent [of Banks]; or

(2) evidencing that the Board of Directors has designated a person in the bank who is authorized to appoint persons to the position of general manager, deputy general manager, representative of the bank, or officer to whom process may be forwarded by the Superintendent [of Banks] accompanied by a certificate (in English), signed by the person designated in the resolution, appointing an individual to such position;

(b) Certificate of designation, specifying the name and address of the officer to whom process may be forwarded by the Superintendent if different (form available from Superintendent);

(c) With respect to the manager, deputy manager and/or representative:

(1) A litigation affidavit executed by the new individual (form available from Superintendent); and

(2) A brief resume of the new individual, disclosing his or her educational and business background.

**TITLE 3. BANKING DIVISION**

SUPERVISORY POLICY G 1  
SCHEDULE OF ADDRESSES AND FEES

Section 1.1 Contacting the New York State [Banking]Department of Financial Services; other agencies; availability of documents.

(a) The main office of the New York State [Banking]Department of Financial Services is the New York City office. Any person having business with the [Banking]Department of Financial Services may contact the New York City office by accessing the Department's Web page, calling the toll-free consumer telephone number or the other telephone number listed for the New York City office, or writing the [Banking]Department of Financial Services at the address listed for the New York City office, as set forth in subdivision (b) of this section. All application forms may be obtained by contacting the New York City office of the [Banking] Department of Financial Services or accessing the [Banking] Department of Financial Services' Web page. Any communications by persons to the Superintendent or any other division or office of the [Banking] Department of Financial Services, including any applications or any documents related thereto, shall be submitted to the New York City office, unless specifically instructed otherwise pursuant to such applications or other communications by the [Banking] Department of Financial Services. Inquiries or complaints regarding persons or entities regulated by the [Banking]Department of Financial Services may be submitted in writing, by accessing the Web page, or by calling the toll-free consumer or New York City office telephone numbers. Persons interested in inspecting or copying public documents available through the [Banking] Department may contact or visit the New York City office as noted herein; however, copying of documents is subject to a fee as set forth in section 1.2 of this Part.

(b) The Web page for the [Banking] Department of Financial Services is:

[www.banking.state.ny.us] www.dfs.ny.gov

The toll-free consumer telephone number for the [Banking] Department of Financial Services is:

1-877-BANK-NYS (226-5697).

The offices of the [Banking] Department of Financial Services are located at:

New York State [Banking] Department of Financial Services  
One State Street  
New York, NY 10004-1417  
(212) 709-5470

New York State [Banking] Department of Financial Services  
[80 South Swan Street  
Suite 1157  
Albany, NY 12210-8003  
(518) 473-6160]

One Commerce Plaza  
Albany, NY 12257

New York State [Banking] Department of Financial Services  
333 East Washington Street  
Syracuse, NY 13202  
(315) 428-4049

(b) The United States Code is published by the Office of the Law Revision Counsel of the United States House of Representatives. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Administration. Both documents are available for public inspection and copying at the New York City office of the [Banking] Department of Financial Services (see contact information, as noted above). The Federal Register also is published by the Office of the Federal Register, National Archives and Records Administration. All the referenced federal publications can be obtained from the U.S. Government Printing Office (GPO). The GPO is located at:

U.S. Government Printing Office  
732 North Capital Station NW  
Washington, DC 20401  
(202) 512-0000.

The publications also may be accessed and copied through the GPO Web page at:

([www.gpoaccess.gov/index.html](http://www.gpoaccess.gov/index.html)).

The GPO Web page also provides the locations of Federal Depository Libraries throughout New York State at which copies of the United States Code, the Code of Federal Regulations and the Federal Register may be viewed.

#### 1.2 Schedule of fees; payment.

(a) Any fee or fees prescribed by this section may be paid by a check payable to the order of "New York State [Banking] Department of Financial Services."

(b) Fees charged for a copy or copies of documents on file with the Banking Department and/or for the certification thereof shall be:

25 cents per page for a copy not exceeding 9 by 14 inches in size, and the actual cost of the reproduction if larger or in any other form or for the certification thereof; except that in the case of requests pursuant to the Freedom of Information Law, the first ten (10) pages of copies, not exceeding 9 x 14 inches made for a requester in any calendar year, shall be free. The Banking Department reserves the right to charge the same fee per page for those records requiring redaction even if no copies are required.

(c) Fees charged for the processing of any application for which a fee may be charged pursuant to the Banking Law, or the regulations thereunder, shall be as set forth in the following schedule:

Schedule of Application Fees

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Section 18-a  
Banking Law Authorized  
Institution Authorizations Amount

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Depository Institutions

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Banks & Trust Companies (including  
Limited Purpose Trust Companies)

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Charter Application	§23	\$12,500
Branch or Public Accommodation Office (see Note 1)	§29/§191	\$750
Change of Location (Temporary and Permanent)	§28-a/§113	\$750
Change of Location (Temporary due to emergency)	§28-a	\$0
Change of Control	§143-b.2	\$12,500
Acquisition of Banking Insti- tution (no change of control)	§143-a	\$12,500
Conversion (From National to State)	§136.5	\$12,500
Merger (National to State)	§136.5	\$12,500
Purchase of Assets (by State from Federal)	§136-a	\$12,500
Merger	§601.1	\$12,500
Purchase of Assets	§601-a	\$12,500
Sale or Conveyance of More Than 50% of Assets	§605.8	\$12,500
Out-of-State, State-Chartered Banking Institutions		
Additional NY Branch (after initial entry)(see Note 2)	§224	\$750
Savings Banks - Mutual		
Charter Application	§23	\$12,500
Branch or Public Accommodation Office (see Note 1)	§29/§191	\$750
Change of Location (Temporary and Permanent)	§28-a/§241.1	\$750
Change of Location (Temporary due to emergency)	§28-a	\$0
Conversion (From Federal to State)	§412	\$12,500

Merger	§601	\$12,500
Purchase of Assets	§601-a	\$12,500
Sale or Conveyance of More Than 50% of Assets	§605.8	\$12,500
Conversion (from Mutual to Stock Form)	§14-e.2	\$12,500
Savings Banks - Stock Form		
Charter Application	§23/§14-e.2	\$12,500
Branch or Public Accommodation Office (see Note 1)	§29/§191	\$750
Change of Location (Temporary and Permanent)	§28-a/§241.1	\$750
Change of Location (Temporary due to emergency) §28-a	\$0	
Change of Control	§143-b.2	\$12,500
Conversion (From Federal to State)	§412, SP-	\$12,500
Merger (Federal to State)	§600/§14-e.2	\$12,500
Purchase of Assets (By State from Federal)	§601-a/§14-e.2	\$12,500
Merger	§601	\$12,500
Purchase of Assets	§601-a	\$12,500
Sale or Conveyance of More Than 50% of Assets	§605.8	\$12,500
Acquisition of Banking Institution (no change of control)	§143-a	\$12,500
Savings & Loans - Mutual		
Charter Application	§23	\$12,500
Branch or Public Accommodation Office (see Note 1)	§29/§191	\$750
Change of Location (Temporary and Permanent)	§28-a/§396	\$750
Change of Location (Temporary due to emergency)	§28-a	\$0
Conversion (From Federal to State)	§410/§412	\$12,500
Merger	§601	\$12,500
Purchase of Assets	§601-a	\$12,500
Sale or Conveyance of More Than 50% of Assets	§605.8	\$12,500
Conversion (from Mutual to Stock Form)	§14-e.2	\$12,500
Conversion (to Savings Bank)	§23/§411	\$12,500
Savings & Loans - Stock Form		
Charter Application	§23/§14-e.2	\$12,500
Branch or Public Accommodation Office (see Note 1)	§29/§191	\$750
Change of Location (Temporary and Permanent)	§28-a/§396	\$750
Change of Control	§143-b.2	\$12,500
Conversion (From Federal to State)	§410	\$12,500
Merger (Federal to State)	§600/§14-e.2	\$12,500
Purchase of Assets (By State from Federal)	§601-a/§14-e.2	\$12,500

Merger	§601	\$12,500
Purchase of Assets	§601-a	\$12,500
Sale or Conveyance of More Than 50% of Assets	§605.8	\$12,500
Acquisition of Banking Institution (no change of control)	§143-a	\$12,500
Conversion (to Savings Bank)	§23/§411	\$12,500

Credit Unions

Charter Application	§23	\$12,500
New Station (see Note 3)	§461	\$750
Change of Location (Temporary and Permanent)	§28-a/§461	\$750
Change of Location (Temporary due to emergency)	§28-a	\$0
Conversion (From Federal to State)	§486	\$12,500
Conversion (to Mutual Savings Bank)	§487-a	\$12,500
Merger	§601.1	\$12,500
Sale or Conveyance of More Than 50% of Assets	§605.8	\$12,500

Foreign Banks - Branches & Agencies

License Application	§201.4	\$7,500
Public Accommodation Office	§191	\$750
Change of Location (Temporary and Permanent)	§28-a/§203.1	\$750
Change of Location (Temporary due to Emergency)	§28-a	\$0

Foreign Banks - Representative Offices

License Application	§26	\$7,500
Change of Location (Temporary) (see Note 4)	§28-a	\$750
Change of Location (Temporary due to emergency)	§28-a	\$0

Private Bankers

Initial Verified Certificate	§23	\$12,500
Verified Certificate (Continuation of Business)	§24	\$750
Branch	§29	\$750
Change of Location (Temporary and Permanent)	§28-a/§164	\$750
Change of Location (Temporary due to emergency)	§28-a	\$0

Investment Companies

Charter Application	§23	\$12,500
Branch (unless exempt under §508.4)	§29/§508.4	\$750
Change of Location (Temporary and Permanent)	§28-a/§511	\$750

Change of Location (Temporary  
due to emergency) §28-a \$0  
Change of Control §519 \$12,500  
Merger §601 \$12,500  
Purchase of Assets §601-a \$12,500  
Sale or Conveyance of  
More Than 50% of Assets §605.8 \$12,500

#### Safe Deposit Companies

Charter Application §23 \$12,500  
Branch §29 \$750  
Change of Location (Temporary  
and Permanent) §28-a/§321 \$750  
Change of Location (Temporary  
due to emergency) §28-a \$0  
Change of Control §324 \$12,500  
Merger §601 \$12,500  
Purchase of Assets §601-a \$12,500  
Sale or Conveyance of  
More than 50% of Assets §605.8 \$12,500

#### Holding Companies

Initial or Expansion  
Application §142 \$12,500  
Acquisition of Banking  
Institution (no change of control) §143-a \$12,500  
Mutual Holding Companies  
Conversion (from Mutual to  
Stock Form) §294/§14-e.2 \$12,500  
Sale of up to 49% of Subsidiary  
Bank Stock §290.1/§14-e.2 \$12,500  
Non-Depository Institutions

#### Mortgage Bankers

Original License §591.2 \$3,000  
Branch License §591.3 \$500  
Change of Control §594-b.1 \$3,000

#### Mortgage Brokers

Original Registration §591-a \$1,500  
Branch §591-a.2 \$500  
Change of Control §594-b \$1,500

#### Check Cashers

Original License §367.3 \$3,000  
Additional Regular Location §367.3 \$2,000  
Mobile Location §367.3 \$2,000  
Limited Station §370.2 \$500  
Change of Location (Regular) §367.3 \$2,000  
Change of Location (Mobile) §367.3 \$500  
Change of Location (Limited) §367.3 \$0  
Change of Control §370-a.1 \$3,000

#### Money Transmitters

Original License §641.3 \$3,000  
Change of Control §652-a.1 \$3,000

#### Licensed Lenders

Master License §341.2 \$3,000  
Additional Location  
(Temporary and Permanent) §341.6 \$500  
Change of Location §343.3.a \$500  
Change of Control §345.1 \$3,000  
Acquisition, Merger, Consolidation,  
Purchase of Assets §344.1 \$3,000

#### Sales Finance Companies

Original License (1 location / 3 or  
more initial locations) §492.4.b&c \$3000/\$4000  
Additional Place of Business §492.4.c \$500  
Change of Control §492-a.1 \$3,000

#### Premium Finance Companies

Original License (1 location / 3 or  
more initial locations) §555.4 \$3,000/\$4,000  
Additional Office §555.3 \$500  
Change of Control §555-a.1 \$3,000

#### Budget Planners

Original License §580.3 \$3,000  
Change of Control §583-a.1 \$3,000

Note 1: No fee charged when branch is part of the approval of a Banking Development District (see §96-d, Banking Law).

Note 2: No fee charged if home state does not charge fee for entry or additional branches of a NY banking institution.

Note 3: The designation of a student branch is not subject to the provisions applicable to stations, pursuant to §450-b, Banking Law.

Note 4: No fee charged for permanent change of location.

**TITLE 3. BANKING DIVISION**

SUPERVISORY POLICY G 2

ADVERTISEMENT OF INTEREST RATES ON SAVINGS AND TIME ACCOUNTS

Section 2.1 Advertisement of interest rate achieved through compounding. Advertisements may refer to an effective annual yield on any savings account, time deposit, certificate of deposit, or other time balance, which is achieved by compounding interest during one year together with a reference to the basis of compounding, but the annual rate of simple interest on such time balance which does not include the effect of compounding shall also be stated with at least equal prominence.

Section 2.2 Advertisement of compounding method. while it is the policy of the [Banking Board] Superintendent to encourage the payment of the maximum permitted interest rates on savings and time accounts, provided sufficient earnings are available to make such payments, it is the [Board's] Superintendent's belief that advertisements which give prominence to statements such as interest is "compounded continuously", "compounded every minute of the day", "compounded every second" or "compounded even while you sleep" may be confusing. Accordingly, the following guidelines are established for advertisements which refer to compounding interest for periods of less than one day:

(a) the reference to the basis of compounding shall be limited to the word "compounded" and the actual time period or interval used; further, such reference shall not be emphasized or otherwise given prominence within the advertisement and, in the case of a printed advertisement, shall not appear in a type size which is larger than that of the text of such advertisement;

(b) the advertisement shall state prominently the effective annual yield achieved by compounding on the basis used as well as the simple annual interest rate in accordance with subsection 2.1 hereof;

(c) the advertisement shall state the monetary difference in the amount earned annually, on the sum of \$1,000, between the method of compounding used and compounding on a daily basis; and

(d) no further statement regarding the basis of compounding, which is not specifically permitted by this subsection 2.2, shall be included in such advertisement.

Irrespective of the description of the method of compounding used, the maximum interest rate permitted by the appropriate regulatory authority may be paid.

**TITLE 3. BANKING DIVISION**

SUPERVISORY POLICY G 3

NOTICE OF MINIMUM BALANCE REQUIREMENTS ON DAY-OF-DEPOSIT TO  
DAY-OF-WITHDRAWAL SAVINGS ACCOUNTS

3.2 Sample notice

3.3 Application to passbooks already issued

Section 3.1 (Notice of minimum balance requirements to be given depositors.) The [banking Board] Superintendent has adopted section 67.2, Part 67, general regulations of the [Banking Board] Superintendent to insure that every depositor having a day-of-deposit to day-of-withdrawal account with a minimum balance requirement be given due notice of such requirement.

3.2 (Sample notice.) Compliance would be effected if the following appears in each passbook, or other evidence of deposit, in clear and prominent type of stamping, printing or otherwise:

"A minimum balance of \$        must be maintained in this account until the end of each interest/dividend period in which a withdrawal is made. Failure to maintain such minimum balance will result in forfeiture or interest/dividends on withdrawals up to the date that the balance falls below the minimum balance."

3.3 (Application to passbooks already issued.) Passbooks already issued as of the effective date of the amendment may be brought into compliance by inserting or affixing the appropriate notice whenever such passbooks are presented at any office of the issuing institution.

**TITLE 3. BANKING DIVISION**

SUPERVISORY POLICY G 4

PUBLIC ACCOMMODATION OFFICES, ADJOINING FACILITIES,  
AND ADJACENT FACILITIES

(Statutory authority: Banking Law, § 195)

4.1 General statement

4.2 Adjoining or adjacent facilities

4.3 Existence of public accommodation office not considered in evaluating application for full-service branch

Section 4.1 General statement. The Superintendent of Financial Services [of Banks] is prepared to authorize public accommodation offices for commercial banks, savings banks and savings and loan associations, subject to the requirements of article IV-A of the Banking Law and provided that unsound or destructive competition would not result, and there is a reasonable likelihood of success for the proposed office.

4.2 Adjoining or adjacent facilities. The establishment of the following does not require authorization by the Superintendent:

(a) Any facility which adjoins the wall of an existing office of an institution.

(b) Any facility which is within 150 feet of the nearest wall of an institution's principal office or branch provided that such facility is located on the same property or property contiguous with the principal office or branch and there is no intervening space occupied or which may be occupied by anyone else (except for purposes of parking by bank customers and employees), and no public street or thoroughfare, between the facility and the institution's principal office or branch. However, the Superintendent must be notified of an institution's intention to open such facility at least 30 days in advance of such opening and such institution must provide proof satisfactory to the Superintendent that the facility meets the above criteria.

4.3 Existence of public accommodation office not considered in evaluating application for full-service branch. The existence of a public accommodation office shall not be considered as a factor in the evaluation of an application for a full-service branch.

**TITLE 3. BANKING DIVISION**

SUPERVISORY POLICY G 6

BRANCHING POLICY FOR BANKING ORGANIZATIONS

(Statutory authority: Banking Law, §§ 14.[1], 29)

- 6.1 General statement
- 6.2 Competing applications
- 6.3 Competitive effects on other institutions

Section 6.1 General statement. The Superintendent of Financial Services [of Banks] is prepared to authorize branches of State-chartered banking organizations, provided that approval of the proposed branch will not result in unsound and destructive competition, the performance of the institution pursuant to the standards set forth in Part 76 of this Title is satisfactory to the department, and the policies, condition and operation of the institution do not afford a basis for supervisory objection. The words banking organization as used in this supervisory policy shall include all banking organizations (as defined in section 2(11) of the Banking Law) which are authorized by the Banking Law to open branch offices, subject to the provisions of section 29 of the Banking Law. The words branch, branches, office and offices as used in this supervisory policy shall not include limited branches, public accommodation offices, satellite offices, automated teller machines, point-of-sale terminals or similar facilities.

6.2 Competing applications.

(a) If applications are filed by two or more institutions for new branches in the same area and, in the judgment of the Superintendent, approval of only one branch is warranted, particular consideration will be given to the following factors:

- (1) which of the institutions is best able, in terms of capital and management strength, to support an additional office;
- (2) the effects of approval on competition and public choice among banking institutions in the area;
- (3) the effects of approval on the competitive banking structure on a citywide or countywide basis;
- (4) the performance of the institution pursuant to the standards set forth in General Regulation Part 76; and
- (5) any other factors which may be of particular relevance in a given situation.

(b) In no event will the date of filing of the application be the sole factor in deciding which of the competing branch applications is approved.

6.3 Competitive effects on other Institutions. In determining whether approval of a branch application by an institution will result in unsound and destructive competition, consideration will be given to all banking organizations as well as to all national banks, out-of-state state banks, Federal savings banks and Federal savings and loan associations, in substantial competitions with the proposed branch.

**TITLE 3. BANKING DIVISION**

SUPERVISORY POLICY G 7

LEGALIZATION OF FOREIGN DOCUMENTS  
(Statutory authority: Banking Law, § 12)

- 7.1 General statement
- 7.2 Model form of apostille
- 7.3 Limitations

Section 7.1 General statement. From time to time, documents executed in foreign countries must be submitted to the [Banking] Department. Such documents include applications by a foreign banking corporation for a license to open a branch or agency in New York, appointment of New York branch manager as well as certifications as to paid-in-capital stock, surplus fund and undivided profit. Such requirements are found, for example, in article V of the New York State Banking Law and Supervisory Procedure CB104.

On October 15, 1981, the United States became a party to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. The convention simplified the procedure for having a foreign document legalized. Each country which is a party to the convention designates the authority or authorities who may certify public documents. A certification, also known as an apostille, is affixed to the document by the competent local authority of the foreign country where the document originated. The form of the apostille is set forth in section 7.2 of this supervisory policy in the same form as set forth in the convention. Further legalization of documents will not be required or submission to the [New York State Banking] Department in the case of documents originating in countries which are parties to the convention.

7.2 Model form of apostille.

APOSTILLE

- 1. Country \_\_\_\_\_
- 2. This public document \_\_\_\_\_  
has been signed by \_\_\_\_\_
- 3. Acting in the capacity of \_\_\_\_\_
- 4. bears the seal/stamp of \_\_\_\_\_
- 5. certified at \_\_\_\_\_
- 6. the \_\_\_\_\_
- 7. by \_\_\_\_\_
- 8. No. \_\_\_\_\_
- 9. Seal/stamp Signature 10. \_\_\_\_\_

7.3 Limitations. This supervisory policy applies only to documents originating in countries which are party to the convention. The [Banking] Department will rely on opinions of counsel or other appropriate evidence from parties seeking to use this supervisory policy that the country in which the documents originate is a party to the convention.



**TITLE 3. BANKING DIVISION**

SUPERVISORY POLICY G 8

REGISTRATION OF DOMESTIC REPRESENTATIVE OFFICES

(Statutory authority: Banking Law, §§14(1), 132, 258)

- 8.1 General
- 8.2 Definitions
- 8.3 Information required
- 8.4 Permissible activities
- 8.5 Designation as representative office

Section 8.1 General.

Any banking institution seeking to establish or maintain a representative office shall submit the information called for by section 8.3 of this Supervisory Policy to the Superintendent [of Banks], at the New York City Office of the [Banking] Department of Financial Services at the address set forth in section 1.1 of Supervisory Policy G-1.

8.2 Definitions.

For purposes of this Supervisory Policy:

(a) "Banking institution" means any bank, trust company, savings bank, and savings and loan association chartered under the laws of New York State, Puerto Rico or any other state or territory of the United States.

(b) "Representative office" means any office located in this State of a banking institution that engages in representational functions (including but not limited to soliciting business, marketing services or acting as liaison with customers) on behalf of the banking institution, but shall not include a branch office of a banking institution or any office that engages solely in administrative or supervisory functions. A representative office shall also include an office of a New York chartered institution located outside this State that engages in representational functions.

8.3 Information required.

(a) The information to be supplied to the [superintendent]Superintendent pursuant to

section 8.1 of this Supervisory Policy shall be in letter form, shall be submitted prior to the establishment of the office, and shall include:

- (1) address of the representative office;
- (2) for institutions headquartered outside this State, address of the head office of the banking institution;
- (3) complete description of the activities of the representative office;
- (4) for institutions headquartered outside this State, opinion of counsel that:
  - (i) the activities of the representative office are permissible under section 8.4 of this Supervisory Policy; and
  - (ii) the banking institution has obtained all regulatory approvals required to establish and maintain such representative office.

(b) Any material changes in the above shall be promptly reported to the [superintendent]Superintendent.

#### 8.4 Permissible activities.

(a) The activities that may be conducted by a representative office of a banking institution in this State on behalf of such banking institution shall be limited to the following:

- (1) approval of loans;
- (2) execution of loan documents;
- (3) solicitation of loans and, in connection therewith, assembly of credit information, making of property inspections and appraisals, securing of title information, preparation of applications for loans (including making recommendations with respect to action thereon);
- (4) solicitation of purchasers of loans from the banking institution;
- (5) solicitation of parties to contract with the banking institution for the servicing of its loans;
- (6) solicitation of other banking business on behalf of the banking institution;
- (7) conduct of research;
- (8) acting as a liaison with customers of the banking institution; and
- (9) other similar activities.

(b) A representative office of a banking institution may not disburse funds, transmit funds, accept loan repayments, or accept or contract for deposits or deposit-type liabilities on behalf of the banking institution.

#### 8.5 Designation as representative office.

Any representative office subject to registration pursuant to this Supervisory Policy shall designate itself as a representative office on any office sign at its office location, telephone listing, print advertisement and on its stationery. It shall also prominently display a notice at its office location that it is not a branch office of a bank and does not engage in general banking transactions at such office.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE G 100  
ADDRESSING OF REQUESTS FOR OFFICIAL ACTION

Section 100.1 General rule.

To insure the orderly processing of [Banking] Department of Financial Services ("Department") mail, supervised institutions and licensees should, unless otherwise specified in a particular procedure, address all initial requests for official action and all initial requests for an opinion of [Banking] Department counsel to the Superintendent, at the address as set forth in section 1.1 of Supervisory Policy G 1.

Copies of such initial correspondence may be sent to named individuals or divisions within the [Banking] Department.

100.2 Subsequent correspondence.

Such initial requests will be routed to specific individuals or divisions within the department, from whom the applicant may receive further correspondence, including requests for additional information. Subsequent correspondence from the applicant concerning the same request should be addressed specifically to such individual or to the deputy superintendent in charge of the division to whom the initial request has been referred.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE G 101  
NOTICE OF AUTOMATED DATA PROCESSING SYSTEMS:  
SUPERINTENDENT'S RIGHT TO EXAMINE INDEPENDENT SERVICES

Section 101.1 Notice.

All banking organizations, registered bank holding companies, and other entities supervised by the [Banking] Department of Financial Services should notify the [Banking]Department of Financial Services, at the address set forth in section 1.1 of Supervisory Policy G 1, of a decision to contract to receive automated data processing services from an independent firm or banking organization.

101.2 Superintendent's right of examination.

Such contract for independently furnished automated data processing services shall state that the [superintendent]Superintendent or his authorized representative has the right to examine all records and material, use the equipment and interview employees of the firm or banking organization furnishing the services to the extent he deems necessary to protect the interests of depositors, creditors or stockholders of the banking organization or licensee receiving such services.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE G 104

APPLICATION FOR A PUBLIC ACCOMMODATION OFFICE  
(Statutory Authority: Banking Law, § 29)

- 104.1 General information
- 104.2 Contents of application

Section 104.1 General information.

A bank or trust company, savings bank or savings and loan association which seeks approval of a public accommodation office pursuant to Banking Law, section 191 should submit an application for such approval to the Superintendent, accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1.

104.2 Contents of application.

Application requirements are set forth by the Superintendent [of Banks]. Forms may be obtained directly from the Department, and are available on the Department's Website [([www.banking.state.ny.us](http://www.banking.state.ny.us))] [www.dfs.ny.gov](http://www.dfs.ny.gov). Additional information may be required on a case-by-case basis.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE G 105  
APPLICATION FOR A CHANGE OF LOCATION OR A CHANGE OF DESIGNATION OF  
PRINCIPAL OFFICE

(Statutory Authority: Banking Law, § 28)

- 105.1 General information
- 105.2 Application
- 105.3 Additional information
- 105.4 Confidential information
- 105.5 Information required for certain relocations

Section 105.1 General information.

Requests for approval to change the location of a place of business or to change the designation of a principal office should be submitted by letter application to the Superintendent, accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. Banking organizations subject to Article III, VI, X, or XI of the Banking Law which seek to change the location of a place of business may utilize an application form in lieu of a letter application. Forms may be obtained directly from the Department, and are available on the [Banking] Department's of Financial Services Web page in each case as set forth in section 1.1 of Supervisory Policy G 1. Banking organizations subject to other articles of the Banking Law which seek to change the location of a place of business should submit a letter application setting forth the information required in Sections 105.2 and 105.3 of this Procedure.

105.2 Application.

The application submitted to the New York City Office of the [Banking] Department of Financial Services at the address set forth in section 1.1 of Supervisory Policy G 1, should state the reason for any proposed change, should include addresses of the offices affected by any such proposed change, and should be accompanied by a copy of the resolution of the board of directors/trustees authorizing such application. (Banking organizations subject to Article III, VI, or X of the Banking Law eligible for the expedited branch application process may submit a statement that a resolution has been passed in lieu of submitting a copy.)

105.3 Additional information.

If the application is for a change of location, the applicant should submit the following:

- (a) a statement giving the proposed date for commencement of operations at the new location and:
  - (1) stating that no lease for the proposed premises will contain a clause prohibiting the landlord from renting space to another banking institution under State or Federal supervision;
  - (2) stating whether any director, trustee, officer or employee of the applicant has any interest, direct or indirect, in the proposed premises, or in the construction thereof;

(3) estimating the cost of establishing an office at the new location;  
(4) confirming that the proposed site has been appropriately zoned to permit the operation of a banking office;

(5) stating whether or not the contemplated expenditures for acquisition of land and buildings, or leasehold improvements, may be incurred within the relevant statutory limits;

(6) indicating the proposed disposition of the present location, if owned, or if leased, the arrangements made to terminate the lease or to sublet the premises; and

(7) confirming that the establishment of the office at the proposed location does not conflict with any of the existing provisions of the New York State Historic Preservation Act.

(8) stating that the applicant is aware of and has given due consideration to adopting appropriate security measures in accordance with industry standards; and

(9) confirming that the level of service at the new location will be substantially the same as, or greater than, the level of service presently being offered. (If this is not the case, an explanation should be provided.)

(b) Any additional items which the Department may require on a case-by-case basis.

#### 105.4 Confidential information.

In accordance with Supervisory Procedure G 106 (Public Access to [Banking] Department of Financial Services Records), the entire application and all supporting material are available for public inspection except for confidential material. If the applicant believes that the public availability or disclosure of certain of the information provided would be clearly harmful, such information should be segregated from the public portion and labeled "Confidential." The applicant should also state the reasons for any request for confidentiality.

#### 105.5 Information required for certain relocations.

The following applies to banking organizations subject to Article III, VI, or X of the Banking Law: for a planned change of location in which the proposed site is outside the immediate neighborhood of the present office, or the nature of the business of the office or the customers served by the office would be substantially affected, the customers of the office must be given prior notice of the relocation of at least ninety days, in the manner set forth in section 112.3 of Supervisory Procedure G 112 (Report of Planned Branch Closings).

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE G 106

PUBLIC ACCESS TO [BANKING] DEPARTMENT of FINANCIAL SERVICES RECORDS  
(Statutory authority: New York Public Officers Law, § 87 & § 89,  
Banking Law § 36)

- 106.1 Definitions
- 106.2 Times and places when records are available
- 106.3 Records access officer
- 106.4 Fees and payment for copies or reproductions
- 106.5 Procedures for gaining access to records
- 106.6 Denial of access to records and the right to appeal
- 106.7 Trade secret/competitive harm exemption
- 106.8 Confidential communications

Section 106.1 Definitions.

When used in this Supervisory Procedure:

- (a) "Person" shall include individuals and commercial enterprises.
- (b) "Interested Parties" shall mean the person requesting the record, the person who requested the exception and the committee on public access to records.
- (c) "POL" shall mean New York Public Officers Law.
- (d) "CPLR" shall mean the New York Civil Practice Law and Rules.

106.2 Times and places when records are available.

Persons seeking access to the records of the [Banking] Department of Financial Services ("Department") made available by POL §§ 87 et seq. (Freedom of Information Law), should submit a written request for photocopies of such records or should submit a written request to inspect such records during regular business hours on regular working days at the [Banking] Department's New York City office located as set forth in Supervisory Procedure G1. The written request may be submitted by regular mail, by facsimile or by email.

106.3 Records access officer.

The [Secretary of the Banking Board is the] Records Access Officer for the [Banking] Department shall be designated by the general counsel from among the attorneys in the office of general counsel and shall be responsible for coordinating the Department's response to requests for records. The Records Access Office is located in the New York City office of the [Banking] Department as set forth in Supervisory Procedure G1.

106.4 Fees and payment for copies or reproductions.

The [Banking] Department charge shall be the fee per page specified in section 1.2 of Supervisory Policy G 1 for copies up to 9 x 14 inches, or the actual cost of reproducing any other type of record. Based on the circumstances of each request, the [Banking] Department may:

- (a) Require payment prior to processing a request, or
- (b) Require payment prior to releasing a completed request, or

(c) Waive any applicable fees.

Waivers of fees will be granted on a case-by-case basis and will be decided based upon the circumstances surrounding each request. Organizations or entities are not entitled to a blanket waiver of all their FOIL requests.

#### 106.5 Procedures for gaining access to records.

A person seeking access to [Banking] Department records shall follow the procedures as set forth below:

(a) A request must be made in writing and shall reasonably describe the records sought. To the extent possible, a request shall supply dates, file designations and any other identifying information that may assist the [Banking] Department in locating the desired documents.

(b) If a person seeks to review records that are in the possession and control of the [Banking] Department, an appointment must be arranged through the Records Access Officer. The review of such records shall take place during regular business hours and on regular business days. There is no fee imposed for viewing records. However, the [Banking] Department may charge the fee per page specified in section 1.2 of Supervisory Policy G 1 for those records, that need to be redacted prior to review.

(c) If access to records is neither granted nor denied within five business days after receiving the request, the [Banking] Department shall issue a written acknowledgment of the receipt of the request and shall provide a statement as to the approximate date when the request will either be granted or denied. This date will be an estimate based on all the attendant circumstances that are reasonably foreseeable at the time that the request is received.

#### 106.6 Denial of access to records and the right to appeal.

(a) Any denial of access to records shall be communicated in writing to the requestor. Such writing shall state the reasons for the denial and shall advise the applicant of the right to appeal.

(b) Except for records covered by POL § 89(5), any requestor who is denied access to any departmental records may, within 30 days of such denial, appeal to the Superintendent of Financial Services ("Superintendent") or an authorized representative of the Superintendent. Within 10 business days from the receipt of the appeal, the Superintendent shall render a decision upholding or reversing the denial and the appellant will be advised in writing as to the reasons for the denial. The action of the Superintendent is subject to judicial review as provided in Article 78 CPLR.

(c) Any denials or appeals concerning records that may be withheld from public disclosure as trade secrets under POL § 87(2)(d), in which a request is made to exempt such records or portions thereof from public disclosure pursuant to § 89(5)(d), shall be subject to the following provisions of section 106.7.

#### 106.7 Trade secret/competitive harm exemption.

(a) A commercial enterprise that submits records to the [Banking] Department may request pursuant to POL § 89(5) that such records or portions thereof be exempted from public disclosure as trade secrets under POL § 87(2)(d). This section gives the [Banking] Department the authority to deny access to records that are trade secrets, or are maintained

for the regulation of the commercial enterprise, which if disclosed would cause substantial injury to the competitive position of the enterprise. In order to obtain the protection afforded by this section, a person that submits records to the [Banking] Department, may at the time of submission, request that the [Banking] Department except such information from disclosure pursuant to § 87(2)(d). The request shall be in writing and shall state the reasons for claiming the exemption.

(b) If a request for confidentiality is made pursuant to POL § 89(5)(a)(1), then the following procedures as set forth in POL § 89(5) shall apply:

(1) The [Banking] Department may at any time, request additional written justification in support of the said exemption. It then shall notify the commercial enterprise requesting said exemption that it must respond within 10 business days from the date the [Banking] Department requests such information. POL § 89(5)(b)(2).

(2) Within seven business days of receiving this response, the [Banking] Department shall issue a written determination granting, continuing or terminating the exemption and the reasons therefore. This determination shall be in writing and shall be served on all interested parties. POL § 89(5)(b)(3).

(3) Within seven business days of receiving a notice of the written denial of an exemption or access to a record, an appeal may be filed with the Superintendent [of Banks]. POL § 89(5)(c)(1).

(4) The appeal shall be determined by the Superintendent [of Banks], within 10 business days of the receipt of the appeal. A written notice of the determination will be given to all interested parties along with the reasons therefor. POL § 89(5)(c)(2).

(5) A proceeding to review an adverse determination by the [Banking] Department may be brought under Article 78 of the CPLR. Such proceeding must be commenced in New York Supreme Court, within 15-days after the Superintendent [of Banks] serves the written notice of the decision on the interested parties. POL § 89(5)(d).

(6) All records submitted to the [Banking] Department shall continue to be exempt from disclosure pending the 15-day appeal period. POL § 89(5)(a)(3).

#### 106.8 Confidential communications.

Reports of examinations and investigations, including correspondence and memoranda arising out of such, are deemed to be confidential material by the [Banking] Department pursuant to New York Banking Law § 36(10). Access to these records may be denied under the provisions of POL § 87(2)(a).

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE G 108  
EVIDENCE OF COMPLIANCE WITH EXECUTIVE LAW, §296-a

(Statutory authority: Executive Law, § 296-a; Banking Law, § 9-d)

- 108.1 Application of procedure
- 108.2 Certification
- 108.3 Supporting documents

Section 108.1 Application of procedure. The procedure outlined in this section applies to every creditor, as defined in section 292 of the Executive Law, who applies to the Superintendent of Financial Institutions ("Superintendent") [or the banking board] for any approval or other action requiring consideration of the public interest and the needs and convenience thereof, or requiring a finding 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 command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently. The procedure also applies to all persons, corporations, partnerships or other entities who apply to the Superintendent [or banking board] for the approval of the certificate of organization of a proposed banking organization, as defined in section 2 of the Banking Law, or for the issuance of a license pursuant to the Banking Law. Such applications include, but are not limited to, the following:

- (a) application for approval of the organization certificate of a proposed banking organization or private banker's certificate;
- (b) application by a foreign corporation for leave to do business in New York as a branch or agency or for renewal of a license therefor;
- (c) application for approval of the conversion or merger of a national banking association into a State bank;
- (d) application for approval of the purchase of the assets of a national banking association by a bank or trust company;
- (e) application for approval of the acquisition and/or exercise of control of a banking organization;
- (f) application for a licensed lender license;
- (g) application for a sales finance company license;
- (h) application for a premium finance agency license;
- (i) application for the approval of a merger of two or more banking organizations;
- (j) application for a transmitter of money license; and
- (k) application for approval to be a bank holding company pursuant to section 141.

108.2 Certification.

- (a) Any person filing an application of the type described in section 108.1 of this Supervisory Procedure shall certify as follows:
  - (1) In the case of a creditor, that it is in compliance with and will continue to comply with section 296-a of the Executive Law.
  - (2) In the case of persons applying for the approval of an organization certificate or a private banker's certificate or for the issuance

of a license, that the proposed banking organization or licensee will comply with section 296-a of the Executive Law.

(b) Forms for certification may be obtained from the New York City Office of the [Banking] Department of Financial Services at the address set forth in section 1.1 of Supervisory Policy G 1.

### 108.3 Supporting documents.

(a) Except as otherwise provided in subdivisions (b) and (c) of this section every certificate submitted by a creditor pursuant to section 108.2(a) of this Supervisory Procedure shall be accompanied by the affidavit of an officer or, in the case of a non-corporate creditor, of a principal or duly authorized representative, which shall state the action taken by such creditor to insure that it is in compliance with section 296-a of the Executive Law. Such statement should include, but need not be limited to, a description of training programs for personnel, materials circulated, statements of policy and names of officials charged with overseeing compliance with section 296-a of the Executive Law, as well as any other evidence which demonstrates such compliance.

(b) If a creditor has filed an affidavit with the [Banking]Department of Financial Services pursuant to subdivision (a) of this section within the 12 months immediately preceding the date on which it files an application for which a certificate is required by section 108.2(a) of this Supervisory Procedure and there has been no change in the facts and circumstances stated in such affidavit, the creditor may so state and may file such statement in lieu of the affidavit required by subdivision (a) of this section.

(c) A creditor may elect to file an affidavit containing the information described in subdivision (a) of this section with the [Banking]Department of Financial Services at any time. A creditor who has filed such an affidavit within the 12 months immediately preceding the filing of an application for which a certification is required by section 108.2(a) of this Supervisory Procedure may, in connection with such certification and in lieu of filing the affidavit required by subdivision (a) of this section, refer to the affidavit filed pursuant to this subdivision and state that there has been no change in the facts and circumstances stated therein.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE G 109

PROCEDURES FOR FILING OF APPLICATIONS UNDER BANKING LAW, SECTION 32  
(INSURANCE OF DEPOSITS AND SHARE ACCOUNTS)

(Statutory authority: Banking Law, § 32)

- 109.0 Applicability
- 109.1 Definitions
- 109.2 Form of application
- 109.3 Criteria

Section 109.0 Applicability.

The procedure and criteria outlined in this Procedure apply to applications for exemption from the requirements of section 32 of the Banking Law or to applications for extensions of time for compliance with the requirements of section 32 of the Banking Law.

109.1 Definitions.

For the purposes of this Procedure, the term banking organization means a State-chartered bank, trust company, savings bank, savings and loan association or credit union as these terms are defined by section 2 of the Banking Law.

109.2 Form of application.

Two copies of a letter application for exemption or extension, signed by a duly authorized officer of the applicant, shall be submitted to the Superintendent of Financial Services ("Superintendent"); at the address set forth in section 1.1 of Supervisory Policy G 1. The application must be accompanied by a certified copy of the resolution of the applicant's board of directors or trustees authorizing such application and shall contain the information set forth below. The [Banking Board] Superintendent reserves the right to require additional information in connection with the application. The applicant may, of course, submit any information in addition to that required which is deemed pertinent to the application.

(a) Application for exemption. Such an application must set forth the basis of the applicant's claim that it does not receive deposits or share accounts from the general public and documentary or statistical information in support of the claim. Exemptions will not be granted to any banking organization which receives deposits or share accounts from the general public.

(b) Application for extension. Such an application must contain:

(1) A statement of the reasons for the application and any documentary or statistical information available to support them.

(2) A statement as to whether the banking organization has complied with all reserve transfer requirements within the provisions of applicable laws and regulations for the three calendar years immediately preceding the date of the application.

(3) Projected balance sheets and earnings statements covering the period of time for which the extension is requested.

109.3 Criteria.

In determining whether or not to approve an application, the [Banking Board] Superintendent shall consider, but not be limited to, the following:

(a) The financial condition of the applicant including asset quality, earnings capacity and surplus or net worth position.

(b) The applicant's management.

(c) Compliance with applicable laws, regulations and generally accepted accounting and operational principles.

(d) Availability of insurance.

(e) Whether an insurance application has been filed and is now pending with an insurer as specified in section 32 of the Banking Law.

(f) The interests of the public, in general, and the interests of the depositors or shareholders, in particular, and whether approval of the application would serve such interests.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE G 110  
REQUESTS FOR DECLARATORY RULINGS

(Statutory authority: State Administrative Procedure Act, §204[1])

- 110.1 Declaratory rulings
- 110.2 Petition
- 110.3 Disposition of petition
- 110.4 Rulings to be made available to the public

Section 110.1 Declaratory rulings.

Any person may, in writing submitted in duplicate, request of the Superintendent of Financial Services ("Superintendent") [of Banks] a declaratory ruling with respect to:

- (a) the application of any regulation or statute enforceable by the Superintendent to any person, property or statement of facts; or
- (b) whether any action by the Superintendent should be taken pursuant to a regulation or rule.

110.2 Petition.

(a) Petitions for declaratory rulings shall contain at least the following information:

- (1) name and address of petitioner;
- (2) a prominently placed caption or notice contained therein that petition is for a declaratory ruling;
- (3) a complete and detailed statement of all relevant facts pertaining to the ruling requested by petitioner;
- (4) a clear and concise statement of the issue sought to be determined by the ruling requested by petitioner;
- (5) precise reference to all statutes, regulations and rules, if known, pertaining to the ruling requested by petitioner; and
- (6) citations to all judicial decisions, if known, either in support of or otherwise, pertaining to the ruling requested by petitioner.

(b) Petitions submitted pursuant to this Procedure shall be sent to the Superintendent, at the address set forth in section 1.1 of Supervisory Policy G 1, [Attn: Deputy Superintendent and Counsel]. The Superintendent reserves the right to request such additional information as he or she shall deem relevant to the issue sought to be determined.

110.3 Disposition of petition.

A petitioner who, after the lapse of 30 days from the date of filing of such petition, shall not have received a declaratory ruling described in section 110.1(a) of this Part may avail himself or herself of the provisions of section 205 of the State Administrative Procedure Act.

110.4 Rulings to be made available to the public. Petitions, and declaratory rulings responding thereto, shall be made available to the public. Written requests for copies of petitions or rulings should be sent to the address listed in section 110.2(b) of this Procedure.



**TITLE 3. BANKING DIVISION**

SUPERVISORY POLICY AND PROCEDURE G 111

ADMINISTRATIVE ADJUDICATION POLICY AND  
PLAN; PROCEDURAL REQUIREMENTS

(Statutory authority: State Administrative Procedure Act, §301.3)

- 111.1 Explanation; note; definitions
- 111.2 Banking [Department] Division policy respecting hearing officers; hearing officers' conduct
- 111.3 Notice; answer
- 111.4 Representation
- 111.5 Subpoenas; discovery
- 111.6 Postponements and adjournments
- 111.7 Failure to appear
- 111.8 Application to reopen
- 111.9 Record
- 111.10 Determinations
- 111.11 Precedent file

Section 111.1 Explanation; note; definitions. (a) Explanation. Pursuant to section 301.3) of the State Administrative Procedure Act and an Executive Order No. 131 dated December 4, 1989 the Superintendent has adopted hereunder a policy, plan and procedural requirements with respect to adjudicatory hearings to insure that such proceedings are impartial, efficient, timely, expert and fair. Such plan, policy and procedures adhere to the principles of administrative adjudication set forth in such Executive Order and, by the adoption thereof, the Superintendent attests to such adherence.

(b) Note. The policy, plan and procedures adopted and/or amended herein provide for the employment by the Superintendent and the Banking Division [Department] of hearing officers who are either nonemployees of the [Banking] Department or employees having no programmatic involvement with prosecutions or adversarial presentations of agency positions for all but the least complex cases. Prior to the adoption of the revised provisions contained in this section and section 111.2 of this Part, hearing officers were drawn by the Superintendent in all cases from the ranks of deputy superintendents and other salaried employees who had not dealt in a material way with the substance of the matter which was the subject of the proceeding.

(c) Definitions. (1) The term Superintendent shall mean the Superintendent of [Banks] Financial Services of New York or such Deputy Superintendent or other persons [of Banks] as the Superintendent shall designate to act in his or her stead pursuant to section 15(4) of the Banking Law and whose program responsibilities are not inconsistent with the object and purposes of this policy and plan.

(2) The term Department shall mean the New York State [Banking] Department of Financial Services.

(3) The term hearing officer shall mean a person designated and empowered by the Superintendent to conduct adjudicatory proceedings as

defined herein, including but not limited to hearing officers, hearing examiners and administrative law judges.

(4) The term adjudicatory proceedings shall mean any activity before the Superintendent in which a determination of legal rights, duties or privileges of named parties thereto is required by law to be made only on a record and after an opportunity for a formal adversarial hearing; provided, however, that such term shall not apply to (i) a rule making proceeding, or (ii) an employee disciplinary action or other personnel action pursuant to article five of the Civil Service Law.

111.2 Banking [Department] Division policy respecting hearing officers; hearing officers' conduct. (a) Banking [Department] Division policy respecting hearing officers.

(1) It is the Superintendent's policy to appoint hearing officers (i) from outside the Banking [Department] Division to be paid on a per diem or contract basis or (ii) from the ranks of the Superintendent's assistants and special assistants whose programmatic functions do not relate to prosecutions or adversarial presentations of agency positions. Outside hearing officers may be drawn from personnel serving as hearing officers in other State agencies or from a list of persons, unaffiliated with any State agency, who possess appropriate experience as hearing officers.

(2) Notwithstanding the provisions of paragraph (1) of this subdivision, the Superintendent may appoint as hearing officers for less complex cases, as defined herein, attorneys on the staff of the [Banking] Department's legal division so long as such attorneys have not performed functions related to the prosecution of the [Banking] Department's position respecting such hearing. As used herein the term less complex cases shall refer only to hearings to determine whether a license (i) has paid any fee or charge required by law to be paid to the [Banking] Department as a cost of regulation, or (ii) has submitted any report required by law to be submitted to the [Banking] Department relative to the business for which it has been licensed, and the penalty therefor.

(3) To assure that those hearing officers appointed are trained to understand the need for objectivity, fairness and the avoidance of any pro-agency bias, the Superintendent will establish training requirements and qualifications in consultation with the Office of the Governor and the Office of Business Permits and Regulatory Assistance as provided in the Executive Order referred to in section 111.1 of this Part.

(4) To further insure against real or apparent bias in favor of the [Banking] Department on the part of hearing officers:

(i) The Department shall not consider whether a hearing officer's rulings, decisions or other actions favor or disfavor the Department or the State in establishing a hearing officer's opportunities for employment, case assignments, working conditions or fees. Hearing officers shall be evaluated on the basis of competence, objectivity, fairness, productivity, diligence and temperament.

(ii) The Department shall not establish, formally or informally, any quotas or similar expectations for any hearing officer that relate in any way to whether the hearing officer's rulings, decisions or other actions favor the Department or the State.

(iii) In any pending adjudicatory proceeding the Superintendent may not order or otherwise direct a hearing officer to make any finding of fact, to reach any conclusion of law, or to make or recommend any specific disposition of a charge, allegation, question or issue, except by remand, reversal, or other decision on the record of the proceeding.

(iv) If the Superintendent issues a decision that includes findings of fact or conclusions of law that conflict with the findings, conclusions or recommended decision of the hearing officer, the Superintendent shall set forth in writing his or her reasons for reaching a conflicting decision.

(b) Hearing officers' conduct. (1) Communications. Hearing officers may not report with regard to functions relating to the merits of adjudicatory proceedings to any Department personnel except the Superintendent or counsel; provided, however, that with respect to ministerial matters, hearing officers may consult with support staff. Unless otherwise authorized by law and except as provided above, a hearing officer shall not communicate, directly or indirectly, in connection with any issue that relates in any way to the merits of an adjudicatory proceeding pending before the hearing officer with any person except upon notice and opportunity for all parties to participate.

(2) Recusal. Upon application of a party, or on their own initiative, hearing officers shall recuse themselves from participating in an adjudicatory proceeding if such participation would violate the Code of Judicial Conduct. A denial of a motion to recuse shall be appealable to the head of the agency or to a board in a manner consistent with the appeal of other hearing officer decisions.

111.3 Notice; answer. An adjudicatory proceeding subject to the provisions of this procedure shall, unless provided in the Banking Law, be commenced upon written notice to the subject of such proceeding, sent to his last address on the records of the [Banking] Department of Financial Services by certified mail, said notice to be mailed at least 10 days prior to the hearing date stated therein. Such notice shall contain at least the following:

- (a) the time, place and nature of the hearing;
- (b) the legal authority and jurisdiction under which the hearing is to be held;
- (c) reference to particular statutes, regulations and rules involved;
- (d) a short and accurate statement of matters to be adjudicated; and
- (e) identification of the designated hearing officer.

At its option, a party may file a written answer to the notice by delivering the same to the [Banking] Department of Financial Services not less than three days prior to the date of hearing.

111.4 Representation. Any party to an adjudicatory proceeding may be represented by counsel who shall file a notice as provided in section 168 of the Executive Law.

111.5 Subpoenas; discovery. Subpoenas may be issued by the Superintendent, his deputy superintendents (or examiners that may be so designated) in their discretion at the request of any party to the proceeding. The party requesting the subpoena shall have the responsibility of serving the subpoena upon the person named therein, unless the Superintendent shall determine otherwise.

In the case of license revocation hearings each party shall be entitled to disclosure of the opposing party's evidence in accordance with section 401.4 of the State Administrative Procedure Act.

111.6 Postponements and adjournments. (a) The commencement of an adjudicatory hearing may be postponed upon application to the Superintendent or his designee by a party. The application may be granted upon a showing of good cause at the discretion of the Superintendent or his designee.

nee, who may require that the application be made in writing.

(b) An adjudicatory hearing in progress may be adjourned for good cause shown upon request of any party at the discretion of the presiding officer. In making such an application for adjournment, the party or counsel shall present such documentary evidence as the presiding officer deems appropriate.

(c) Adjournments on consent of all parties shall be at the discretion of the presiding officer who may, in addition, upon his own initiative adjourn an adjudicatory proceeding.

(d) The factors to be considered in determining good cause shown, as used in this section, shall include, but not be limited to, the following:

- (1) illness of party;
- (2) temporary absence or illness of witness;
- (3) opportunity to obtain attorney;
- (4) illness of attorney; and
- (5) actual engagement of attorney in a court proceeding.

(e) Protracted illness of a party's witness or an attorney shall not in and of itself be the basis of continuing adjournments or postponements. Engagement of an attorney in a judicial or administrative proceeding which extends beyond one month, or a series of prior engagements for such period of time, shall not be considered a basis of an adjournment or postponement.

111.7 Failure to appear. In the event a party fails to appear or to be represented at an adjudicatory hearing without having obtained a postponement or adjournment, such hearing shall proceed on the record and a decision rendered thereon.

111.8 Application to reopen. (a) Upon written application made by a party, the presiding officer may reopen an adjudicatory proceeding and take such further action as justice may require, as follows:

(1) Where the party failed to appear at the hearing, the party, in making the application to reopen, must satisfy the presiding officer that there were valid reasons for having failed to appear.

(2) Where the party making such an application had appeared at the hearing, the party must demonstrate to the presiding officer that there is newly discovered evidence or compelling reason for reopening.

(b) All applications to reopen an adjudicatory proceeding shall be made within four months from the effective date of the opinion and decision. No such application shall be submitted by any party who has initiated judicial proceedings to reopen an adjudicatory proceeding.

111.9 Record. A record shall be made of all adjudicatory proceedings, which record shall include:

- (a) all notices, pleadings, motions and rulings;
- (b) a stenographic transcript of all argument, examination, cross-examination, questions and offers of proof, objections thereto and rulings thereon, unless waived by all parties;
- (c) any documentary evidence offered or admitted; and
- (d) any decision, determination or order rendered.

111.10 Determinations. All final decisions, determinations or orders in an adjudicatory proceeding shall be in writing or stated in the record and shall include findings of fact and conclusions of law on which the decision, determination or order is based. Findings of fact, if set forth in statutory language, shall be accompanied by a statement

of the underlying facts supporting the findings.

111.11 Precedent file. When an adjudicatory proceeding and any challenge thereto shall have been finalized, the Superintendent shall maintain the determination with respect thereto in a file which shall be available for inspection subject to such limitations and conditions as may be provided in the Freedom of Information Law.

#### APPENDIX 1 TO SUPERVISORY PROCEDURE G-111

##### SUMMARY OF RULES GOVERNING ADJUDICATORY PROCEEDINGS

The New York State Banking Division of the Department of Financial Services is about to conduct an adjudicatory proceeding, i.e., a hearing, of which you will be the subject. This proceeding is conducted by statutory authority of the State Administrative Procedure Act section 301 and Supervisory Procedure G-111 of the New York State [Banking] Department of Financial Services' Regulations.

The presiding officer of the hearing is chosen by the Superintendent [of Banks] from either (a) a group of persons who are not employees of the Banking Division of the Department of Financial Services or from the ranks of the Superintendent's assistants and special assistants who are not involved in prosecutions or adversarial presentations of agency positions, all of whom are experienced in conducting adjudicatory proceedings. The hearing officer will not have previously dealt in any way with the subject matter of the hearing, and shall endeavor to conduct the hearing in a fair and impartial manner and in accordance with principles of ethics. In cases where the only issue to be determined is whether a licensee has paid a fee required under law or submitted a report required under law, i.e., a case without a complex issue, an attorney taken from the [Banking] Department's Legal Division may be designated to hear your case.

The hearing shall be conducted in accordance with standards of procedural due process. You are entitled to reasonable notice of the proceeding and an opportunity to be heard on the issues.

Reasonable notice of this hearing shall be in the form of written notice mailed to your last known address on the records of the [Banking] Department. Said notice is to be mailed at least 10 days prior to the hearing date and shall specify the time, place and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, shall refer to particular statutes, regulations and rules involved, shall contain a short and accurate statement of matter to be decided, and shall identify the designated hearing officer.

You have the right to, but are not required to, file a written answer to the notice by delivering the same to the [Banking] Department of Financial Services within three days of the hearing.

You have the right to be represented by counsel at the hearing. You shall have the opportunity to present oral and written argument on issues of law, and fact, as well as supporting evidence.

Subpoenas may be issued by the Superintendent in his or her discretion at the request of you or any other party to the proceeding and may be used as a discovery device, i.e., to ascertain any documents or other evidence helpful to establish a party's case. If the proceeding concerns license revocation, each party is entitled to disclosure of the opposing party's evidence.

If you wish to postpone the proceeding, you may make written application to the Superintendent. In the discretion of the Superintendent, at the request of any party, the hearing may be postponed or adjourned for good cause including but not limited to illness of a party, temporary absence or illness of witness, opportunity to obtain attorney, illness

of attorney, and actual engagement of attorney in a court proceeding. At the discretion of the hearing officer, there may also be an adjournment on consent of all the parties.

Even if you fail to appear or be represented at the hearing without having obtained a postponement or adjournment, a record of the hearing will be made and a decision will be rendered.

If you fail to appear, you may make a written application to re-open the adjudicatory proceeding. You must convince the hearing officer that there were valid reasons for your absence at the hearing. Your application must be made within four months from the effective date of the opinion and decision.

There shall be a record made of the adjudicatory proceeding which shall include all notices, pleadings, motions and rulings, a stenographic transcript of the entire proceeding, any documentary evidence offered or admitted, and any decision, determination or order rendered.

All final decisions, determinations or orders in an adjudicatory proceeding shall either be in writing or stated on the record and shall include findings of fact and conclusions of law on which the decision, determination or order is based.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE G 112

REPORT OF PLANNED BRANCH CLOSINGS

(Statutory authority: Banking Law, §§ 10, 14, 37[3])

- 112.1 General statement
- 112.2 Report to the [superintendent]Superintendent
- 112.3 Notice to customers
- 112.4 Findings of [superintendent]Superintendent; consultations by [superintendent]Superintendent
- 112.5 Definitions

Section 112.1 General statement.

This Supervisory Procedure is designed to provide the Superintendent of Financial Services ("Superintendent") [of Banks] with detailed information concerning the planned closings of branch offices by State-chartered banking organizations, the availability of alternative financial services within the general area served by such branches, and the economic impact upon the community resulting from such closings, and to provide the Superintendent with authority to conduct meetings with banking organizations and community groups in areas where a branch closing is planned. A sale or other transfer of a branch office which does not result in any material reduction in the financial services offered at such location shall not be deemed to be a closing of such branch, notwithstanding the fact that the ownership of such branch has been transferred from a banking organization to another banking institution. Provided that the report and notice are given as required in sections 112.2 and 112.3 of this Procedure, nothing contained in this Procedure shall prevent a banking organization from closing a branch.

112.2 Report to the Superintendent. (a) Every banking organization shall submit to the Superintendent [of Banks] a report of its planned closing of a branch office not less than 90 days nor more than 180 days prior to the planned closing. Such report shall be in writing and shall contain:

- (1) a statement of the reasons leading to the decision to close the branch;
- (2) any statistical or other information in support thereof;
- (3) a past (at least three years), present and projected financial analysis of deposits at such branch (giving number of accounts and dollar amount, profits and losses);
- (4) a past (at least three years), present and projected financial analysis of profits and losses relating to the loan activity at such branch;
- (5) a detailed map of the general area served by such branch, showing the distance and direction of all remaining State- or federally chartered banking institutions within such area and any licensee of the Banking Division, of the Department of Financial Services which provides financial services of any kind (e.g., licensed lenders, check cashers); and
- (6) a description of any planned limited or full service banking

facility to be opened within such area by either the reporting banking organization or, if known to the reporting banking organization, by any other banking institution.

(b) Reports submitted pursuant to this section shall be treated as confidential, pursuant to section 106.6 of these Supervisory Procedures.

112.3 Notice to customers. Every banking organization shall give notice to its customers of the planned closing of a branch not less than 90 nor more than 180 days prior to the planned date of closing. Such notice shall be accomplished by:

(a) the posting of a notice in a conspicuous place in the branch which is planned to be closed, and leaving such notice in such branch for at least 90 days; and

(b) the inserting of a single notice in the periodic account statement ordinarily mailed to each person who maintains a banking relationship with such banking organization at the branch which is planned to be closed.

112.4 Findings of Superintendent; consultations by Superintendent. The Superintendent shall make a finding as to whether or not the proposed branch closing will result in a significant reduction of financial services in the community to be affected. Such findings shall be made public. If the Superintendent finds that the availability of financial services in the community will be significantly reduced by the closing of the branch office, he shall be authorized to conduct such meetings with banking organizations and community leaders as are necessary, in his judgment, to explore the feasibility of replacing such branch with other adequate banking facilities.

112.5 Definitions. As used in this Procedure:

(a) the words banking organization shall mean and include each bank, trust company, savings bank, and savings and loan association, as those terms are defined in section 2 of the Banking Law;

(b) the words branch office, branch or office shall include principal offices, branch offices, and public accommodation offices, but shall not include convenience centers, mobile teller units, automatic teller machines, point-of-sale terminals or similar facilities;

(c) the words financial services shall mean and include demand and time deposit accounts, check cashing services, deposit and withdrawal transactions, sale of bank or travelers checks and money orders, processing loan applications, acceptance of loan repayments, and any related services; and

(d) the words facility and facilities shall mean and include any building, structure, vehicle, unit, machine or device, permanent or temporary, mobile or stationary, at which financial services of any kind or description are provided or dispensed.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE G 114

ACCESS TO PERSONAL INFORMATION

(Statutory authority: Public Officers Law, art. 6-A)

- 114.1 Purpose and scope
- 114.2 Designation of privacy compliance officer
- 114.3 Proof of identity
- 114.4 Location
- 114.5 Hours for public inspection and copying
- 114.6 Requests for records
- 114.7 Amendment of records
- 114.8 Denial of request for a record or amendment or correction of a record or personal information
- 114.9 Appeal
- 114.10 Statement of disagreement by data subject
- 114.11 Fees
- 114.12 Severability

Section 114.1 Purpose and scope.

(a) It is the purpose of this Supervisory Procedure to set forth the procedures and limitations relative to the maintenance and disclosure of personal information under the provisions of article 6-A of the Public Officers Law, the Personal Privacy Protection Law. Unless the context requires otherwise, the terms used herein shall have the same meanings ascribed to them in said article 6-A.

(b) The [Banking] Department of Financial Services ("Department") shall maintain in its records only such personal information as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order, or to implement a program specifically authorized by law.

(c) Personal information will be collected, whenever practicable, directly from the person to whom the information pertains.

(d) The Department seeks to ensure that all records pertaining to or used with respect to individuals are accurate, relevant, timely and complete.

114.2 Designation of privacy compliance officer.

- (a) The [Secretary of the Banking Board is hereby designated] Privacy Compliance Officer for the Department shall be designated by the general counsel from among the attorneys in the office of the general counsel and is responsible for ensuring that the Department complies with the provisions of the Personal Privacy Protection Law and this Supervisory Procedure and for coordinating the Department's response to requests for records or amendment of records.
- (b) The address and telephone number of the privacy compliance officer is the New York City office of the [Banking] Department, at the address and telephone number set forth in section 1.1 of Supervisory Policy G 1.

#### 114.3 Proof of identity.

(a) When a request is made in person, or when records are made available in person following a request made by mail, the Department may require appropriate identification, such as a driver's license, an identifier assigned to the data subject by the Department, a photograph or similar information that confirms that the record sought pertains to the data subject.

(b) When a request is made by mail, the Department may require verification of a signature or inclusion of an identifier generally known only by a data subject, or similar appropriate identification.

(c) Proof of identity shall not be required regarding a request for a record accessible to the public pursuant to article 6 of the Public Officers Law, the Freedom of Information Law.

#### 114.4 Location.

(a) Records shall be made available at the main office of the Department, which is located at the address set forth in section 1.1 of Supervisory Policy G 1.

(b) Whenever practicable, records shall be made available at a regional office most convenient to a data subject. Regional offices are located at: [194 Washington Avenue, Albany, NY 12210] One Commerce Plaza Albany, NY 12257; [1530 Jefferson Road, Rochester, NY 14623]; and 333 East Washington Street, Syracuse, NY 13202[; and 125 Main Street, Room 415, Buffalo, NY 14203].

114.5 Hours for public inspection and copying. The Department shall accept requests for records and produce records from 9 a.m. to 4 p.m. Monday through Friday.

#### 114.6 Requests for records.

(a) All requests shall be made in writing.

(b) A request shall reasonably describe the record sought. Whenever possible, the data subject should supply identifying information that assists the Department in locating the record sought.

(c) Within five business days of the receipt of a request, the department shall either:

(1) provide access to the record;

(2) deny access in writing, explaining the reasons therefor; or

(3) acknowledge the receipt of the request in writing, stating the approximate date when the request will be granted or denied, which date shall not exceed 30 days from the date of the acknowledgment.

114.7 Amendment of records. Within 30 business days of a request from a data subject for correction or amendment of a record or personal information that is reasonably described and that pertains to the data subject, the Department shall either:

(a) make the amendment or correction in whole or in part and inform the data subject that, on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law; or

(b) inform the data subject in writing of its refusal to correct or amend the record, including the reasons therefor.

114.8 Denial of request for a record or amendment or correction of a record or personal information.

(a) Denial of a request for records or amendment or correction of a record or personal information:

(1) shall be in writing, explaining the reasons therefor; and

(2) identifying the person to whom an appeal may be directed.

(b) A failure to grant or deny access to records within five business days of the receipt of a request or within 30 days of an acknowledgment of the receipt of a request, or a failure to respond to a request for amendment or correction of a record within 30 business days of receipt of such a request, shall be construed as a denial that may be appealed.

114.9 Appeal.

(a) Any person denied access to a record or denied a request to amend or correct a record or personal information pursuant to section 114.8 of this Supervisory Procedure may, within 30 days of such denial, appeal to the [First] Executive Deputy Superintendent [Banks] of the Department Financial Services.

(b) The time for deciding an appeal shall commence upon receipt of an appeal that identifies:

(1) the date and location of a request for a record or amendment or correction of a record or personal information;

(2) the record that is the subject of the appeal; and

(3) the name and return address of the appellant.

(c) Within seven business days of an appeal of a denial of access, or within 30 days of an appeal concerning a denial of a request for correction or amendment, the [First] Executive Deputy Superintendent of [Banks]the Department of Financial Services shall:

(1) provide access to or correct or amend the record or personal information; or

(2) fully explain in writing the factual and statutory reasons for further denial and inform the data subject of the right to seek judicial review of such determination pursuant to article 78 of the Civil Practice Law and Rules.

(d) If, on appeal, a record or personal information is corrected or amended, the data subject shall be informed that, on request, the correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (c) of subdivision 3 of section 94 of the Public Officers Law.

(e) The Department shall immediately forward to the Committee on Open Government a copy of any appeal made pursuant to this section, the determination thereof and the reasons therefor.

114.10 Statement of disagreement by data subject. (a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the Department shall inform the data subject of the right to:

(1) file with the Department a statement of reasonable length setting forth the data subject's reasons for disagreement with the determination; and

(2) request that such a statement of disagreement be provided to any person or governmental unit to which the record has been or is disclosed pursuant to paragraph (d), (i) or (1) of subdivision 1 of section 96 of the Public Officers Law.

(b) Upon receipt of a statement of disagreement by a data subject, the Department shall:

(1) clearly note any portions of the record that are disputed; and

(2) attach the data subject's statement as part of the record.

(c) When providing a data subject's statement of disagreement to a person or governmental unit in conjunction with a disclosure made pursuant to paragraph (d), (i) or (1) of subdivision 1 of section 96 of the Public Officers Law, the Department may also include a concise statement of its reasons for not making the requested amendment or correction.

#### 114.11 Fees.

(a) Unless otherwise prescribed by statute, copies of records shall be provided for the fee per page specified in section 1.2 of Supervisory Policy G 1.

#### 114.12 Severability.

If any provision of this Supervisory Procedure or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Supervisory Procedure or the application thereof to other persons and circumstances.

## MORTGAGE BANKS

### TITLE 3. BANKING DIVISION

#### SUPERVISORY PROCEDURE MB 101

APPLICATION FOR A LICENSE AS A MORTGAGE BANKER  
(Statutory authority: Banking Law, art. 12-D, § 590)

- 101.1 General information
- 101.2 Application forms and assistance
- 101.3 Definitions
- 101.4 Information and documents required to be submitted

Section 101.1 General information.

(a) General requirements. Any person or entity seeking to engage in the business of making five or more mortgage loans in any one calendar year shall submit to the Superintendent of Financial Services ("Superintendent") an application on Form MB-101 containing the information and documents required by section 101.4 of this Supervisory Procedure, accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. A separate check that may be either certified, bank check or money order payable to the "New York State [Banking] Department of Financial Services" to cover the processing of the New York State and FBI fingerprints cards is to be included. The application, questionnaires and other related documents shall be filed in duplicate under oath with the Mortgage Banking Division [of the Banking Department].

(b) Time periods. All of the information and documents required to be submitted by an applicant pursuant to this Supervisory Procedure shall be supplied to the Superintendent. The statutory period for approval or disapproval set forth in section 592 of the Banking Law shall commence on the date that the [Banking] Department has received both the applicable filing fee and an application determined by the [Banking] Department to be complete and prepared in accordance with this Supervisory Procedure.

(c) Execution. Each copy of the application shall be signed by the applicant. If the applicant is a partnership, corporation, trust or other entity, the application shall be signed by a controlling member, authorized executive officer or trustee as applicable. A corporate applicant shall submit a copy of the corporate resolution authorizing the officer to sign the application on behalf of the corporation. Each person signing the application shall:

- (1) certify that the Superintendent will be promptly advised of any changes which may occur in the information furnished in the application subsequent to the date upon which the information was furnished; and
- (2) affirm, under penalty of perjury, that the application was reviewed and that the application does not make any untrue statement of a material fact or omit any material fact necessary in order that the application not be misleading.

(d) Additional information and in-person conferences. The Superintendent reserves the right to require additional information in

connection with the application. 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 applicant appear at the [Banking] Department for conferences. The applicant may submit any additional information it deems pertinent to the application.

#### 101.2 Application forms and assistance.

Application forms and assistance in preparing such applications may be obtained through the Mortgage Banking Division of the [Banking] Department, at the address set forth in section 1.1 of Supervisory Policy G 1.

#### 101.3 Definitions.

For purposes of this Supervisory Procedure:

(a) Executive officer is any officer who participates or has authority to participate in major policy-making functions of the institution, regardless of his or her title.

(b) Controlling member of a partnership is any general partner or any limited partner with 10 percent or more equity interest in the partnership.

(c) Affiliate is any person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

(d) Subsidiary is any company, a majority of the voting stock of which is directly or indirectly owned, controlled or held with power to vote, by an applicant or any entity controlled by an applicant.

(e) Adjusted net worth is defined in Part 410 of this Title.

(f) Principal stockholder is any person who directly or indirectly owns, controls or holds with power to vote 10 percent or more of any class of outstanding capital stock of a corporation or possesses the power to direct or cause the direction of the management and policies of a mortgage banker.

(g) Principal beneficiary is any person or entity entitled to 10 percent or more of the benefit of the trust.

#### 101.4 Information and documents required to be submitted.

Each applicant for a mortgage banking license must submit information and documents as set forth below:

(a) Name and address of applicant. Set forth the name, address, principal place of business and telephone and fax numbers of the applicant. If applicable, also state any trade or fictitious names which have been or will be used by the applicant.

(b) Organizational structure and ownership of applicant. State whether the applicant is an individual, corporation, partnership or trust. If an individual, set forth the name, residence address and telephone and fax numbers of the individual applicant. If a corporation, set forth the name, residence address, telephone and fax numbers and percent of each class of outstanding capital stock owned by each executive officer, director and principal stockholder. If a partnership, set forth the name, residence address, telephone and fax numbers and percentage ownership of each controlling member of the partnership. If a trust, set forth the name, residence address and telephone and fax numbers of each trustee and principal beneficiary of the trust. If a corporation, list the number and percentage of stock owned by each stockholder owning less than ten percent of any class of the outstanding capital stock. If a

partnership, state where the articles of partnership were filed and the date of filing. If a corporation, indicate the state of incorporation and the date of filing. List the complete name and address of any branch, subsidiary, or other affiliate of the applicant operating in this State.

(c) Name and address of principal contact person. Set forth the name, complete address and telephone and fax numbers of the person(s) having general responsibility for the applicant to whom all communications from the [Banking] Department should be addressed and the person(s) responsible for regulatory and financial matters.

(d) Licenses received. List all states in which the applicant, under this or any other name, or any subsidiary or other affiliate of the applicant, is licensed to engage in any of the following: banking, insurance, sales, finance, small loan, mortgage lending, insurance premium financing, real estate or securities, together with the name of the operating company and the name and address of the agency responsible for supervising the person or entity. Also, list any other professional licenses held by any of the foregoing.

(e) Prior applications. The applicant, under this or any other name, any subsidiary or other affiliate of the applicant, and, as applicable, any officer, director and principal stockholder of a corporate applicant, any controlling member of a partnership applicant and any trustee and principal beneficiary of a trust applicant shall submit information with respect to any refusal, revocation or suspension of license(s) in this or any other state and/or any prior bankruptcy adjudications or criminal convictions in this or any other state.

(f) Unsafe or unsound banking practices. The applicant, under this or any other name, any subsidiary or other affiliate of the applicant, and, as applicable, any officer, director and principal stockholder of a corporate applicant, any controlling member of a partnership, applicant and any trustee and principal beneficiary of a trust applicant shall submit information with respect to any finding of having conducted unsafe or unsound practices while employed as an officer, director, or trustee of a banking organization or having been removed as an officer, director, or trustee of a banking organization by any bank regulatory agency.

(g) Financial information. (1) The applicant, at the time of application, shall submit audited financial statements showing an adjusted net worth of no less than \$250,000 as of the close of its most recent fiscal year. In addition, the applicant shall submit the most recent quarterly financial statements subsequent to such annual statements. If the applicant is a corporation, partnership or trust financial statements, audited if available, shall be submitted for the previous two years if the applicant was in existence for that period. If applicable, submit the most recent consolidated audited financial statements of the applicant's parent corporation.

(2) The applicant, at the time of application, shall submit written documentation from an unaffiliated third party provider that the applicant has a line of credit of no less than \$1,000,000. The line of credit shall be provided by a bank, insurance company, or similar credit facility approved by the Superintendent.

(3) Prior to obtaining a license, the applicant shall file a surety bond in the principal sum of \$50,000 in a form satisfactory to the Superintendent or execute a deposit agreement approved by the Superintendent coupled with a pledged deposit of securities, funds or other assets in the amount of \$50,000 valued at the lower of principal amount or market, pursuant to Part 410 of this Title. Surety bonds and deposi-

tory agreement forms may be obtained from the Mortgage Banking Division.

(h) Personal information. As applicable, each individual applicant, each director, the three most senior executive officers and, if different, any officer(s) in charge of the New York operations of the licensed mortgage banker and principal stockholder of a corporate applicant, each controlling member of a partnership applicant, or trustee and principal beneficiary of a trust applicant shall complete a personal history questionnaire obtained from the [Banking] Department. All of the above shall file an authority to release information form. As applicable, each individual applicant, each director, the three most senior executive officers, and, if different, any officer(s) in charge of the New York operations of the licensed mortgage banker and principal stockholder of a corporate applicant, each controlling member of a partnership applicant, or trustee and principal beneficiary of a trust applicant shall submit a signed and acknowledged current, personal financial statement.

(i) Minimum experience qualifications. Set forth the name of the person who meets the minimum experience qualifications as described in Part 410 of this Title. That person shall be either an owner, general partner, trustee or executive officer of the applicant, as applicable, and shall be actively engaged in the daily operations of the mortgage banker.

(j) Corporate, partnership or trade style documents to be submitted, as applicable:

- (1) a copy of the certificate of incorporation;
- (2) a copy of the qualification to do business in this State;
- (3) a copy of the certificate of limited or general partnership;
- (4) a copy of an executed partnership agreement;
- (5) a certificate of the county clerk that a trade name or "doing business as" certificate has been filed in the office of the county clerk pursuant to section 130 of the General Business Law; and
- (6) a copy of an executed trust agreement.

(k) Other documents to be submitted:

- (1) affidavit of ownership filed by the applicant;
- (2) litigation affidavit describing any legal proceedings against the applicant or against any executive officer, director or principal stockholder of a corporate applicant, controlling member of a partnership applicant, or trustee or principal beneficiary of a trust applicant;

(3) fingerprint cards (New York State NON-CRIMINAL and FBI) for each individual applicant, executive officer, director and principal stockholder of a corporate applicant, controlling member of a partnership applicant, or trustee and principal beneficiary of a trust applicant, together with such fees as may be required for processing the fingerprints;

(4) a background report for each individual applicant, executive officer, director and principal stockholder of a corporate applicant, controlling member of a partnership applicant, or trustee and principal beneficiary of a trust applicant (names of acceptable companies that supply such reports may be obtained from the [Banking] Department's Mortgage Banking Division);

(5) executed certificate of compliance in accordance with section 296-a of the New York Executive Law;

(6) taxpayer Identification Information form for the applicant; and

(7) a surety bond in the principal sum of \$50,000 or a deposit agreement coupled with a pledged deposit of securities, funds or other assets in the amount of \$50,000 valued at the lower of principal amount or market, pursuant to Part 410 of this Title. Such bond or deposit agreement must be approved by the Superintendent. Model forms may be

obtained from the Department's Mortgage Banking Division.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE MB 102  
APPLICATION FOR REGISTRATION AS A MORTGAGE BROKER

(Statutory authority: Banking Law, art. 12-D, § 590.2[b])

- 102.1 General information
- 102.2 Application forms and assistance
- 102.3 Definitions
- 102.4 Information and documents required to be submitted

Section 102.1 General information.

(a) General requirements. Any person or entity seeking to engage in the business of soliciting, processing, placing or negotiating a mortgage loan or offering to solicit, process, place or negotiate a mortgage loan in this State shall submit an application to the Superintendent of Financial Services ("Superintendent") on form MB-102 containing the information and documents required by section 102.4 of this Supervisory Procedure, accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. A separate check that may be either certified, bank check or money order payable to the "New York State [Banking] Department of Financial Services" to cover the processing of the New York State and FBI fingerprints cards is to be included. The application, questionnaires and other related documents shall be filed in duplicate under oath with the Mortgage Banking Division of the [Banking]Department of Financial Services.

(b) Time periods. All of the information and documents required to be submitted by an applicant pursuant to this Supervisory Procedure shall be supplied to the Superintendent. The statutory period for approval or disapproval set forth in section 592-a of the Banking Law shall commence on the date that the [Banking] Department has received both the applicable filing fee and an application determined by the [Banking] Department to be complete and prepared in accordance with this Supervisory Procedure.

(c) Execution. Each copy of the application shall be signed by the applicant. If the applicant is a partnership, corporation, trust or other entity, the application shall be signed by a controlling member, authorized executive officer or trustee as applicable. A corporate applicant shall submit a copy of the corporate resolution authorizing the officer to sign the application on behalf of the corporation. Each person signing the application shall:

- (1) certify that the Superintendent will be promptly advised of any changes which may occur in the information furnished in the application subsequent to the date upon which the information was furnished; and
- (2) affirm, under penalty of perjury, that the application was reviewed and that the application does not make any untrue statement of a material fact or omit any material fact necessary in order that the application not be misleading. If the application is executed outside of New York State, a county clerk's certificate authenticating the signatures of the notaries taking the acknowledgements must be affixed

to the application.

(d) Additional information and in-person conferences. The Superintendent reserves the right to require additional information in connection with the application. 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 applicant appear at the [Banking] Department for conferences. The applicant may submit any additional information it deems pertinent to the application.

#### 102.2 Application forms and assistance.

Application forms and assistance in preparing such applications may be obtained through [the] Mortgage Banking Division of the [Banking] Department, at the address set forth in section 1.1 of Supervisory Policy G 1.

#### 102.3 Definitions.

For purposes of this Supervisory Procedure:

(a) Executive officer is any officer who participates or has authority to participate in major policy-making functions of the institution, regardless of his or her title.

(b) Controlling member of a partnership is any general partner or any limited partner with 10 percent or more equity interest in the partnership.

(c) Affiliate is any person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

(d) Subsidiary is any company, a majority of the voting stock of which is directly or indirectly owned, controlled or held with power to vote, by an applicant or any entity controlled by an applicant.

(e) Principal stockholder is any person who directly or indirectly owns, controls or holds with power to vote 10 percent or more of any class of outstanding capital stock of a corporation or possesses the power to direct or cause the direction of the management and policies of a mortgage broker.

(f) Principal beneficiary is any person or entity entitled to 10 percent or more of the benefit of the trust.

102.4 Information and documents required to be submitted. Each applicant for a mortgage broker registration must submit information and documents as set forth below:

(a) Name and address of applicant. Set forth the name, address, principal place of business, telephone and fax numbers of the applicant. If applicable, also state any trade or fictitious names which have been or will be used by the applicant.

(b) Organizational structure and ownership of applicant. State whether the applicant is an individual, corporation, partnership or trust. If an individual, set forth the name, residence address and telephone and fax numbers of the individual applicant. If a corporation, set forth the name, residence address, telephone and fax numbers and percent of each class of outstanding capital stock owned by each executive officer, director and principal stockholder. If a partnership, set forth the name, residence address, telephone and fax numbers and percentage ownership of each controlling member of the partnership. If a trust, set forth the name, residence address and telephone and fax numbers of each trustee and principal beneficiary of the trust. If a corporation, list

the number and percentage of stock owned by each stockholder owning less than ten percent of any class of the outstanding capital stock. If a partnership, state where the articles of partnership were filed and the date of filing. If a corporation, indicate the state of incorporation and the date of filing. List the complete name and address of any branch, subsidiary, or other affiliate of the applicant operating in this State.

(c) Name and address of principal contact person. Set forth the name, complete address and telephone and fax numbers of the person(s) having general responsibility for the applicant to whom all communications from the [Banking] Department should be addressed and the person(s) responsible for regulatory and financial matters.

(d) Licenses received. List all states in which the applicant, under this or any other name, or any subsidiary or other affiliate of the applicant, is licensed to engage in any of the following: banking, insurance, sales finance, small loan, mortgage lending, insurance premium financing, real estate or securities, together with the name of the operating company and the name and address of the agency responsible for supervising the person or entity. Also, list any other professional licenses held by any of the foregoing.

(e) Prior applications. The applicant, under this or any other name, any subsidiary or other affiliate of the applicant, and, as applicable, any officer, director and principal stockholder of a corporate applicant, any controlling member of a partnership applicant and any trustee and principal beneficiary of a trust applicant shall submit information with respect to any refusal, revocation or suspension of license(s) in this or any other State and/or any prior bankruptcy adjudications or criminal convictions in this or any other State.

(f) Unsafe or unsound banking practices. The applicant, under this or any other name, any subsidiary or other affiliate of the applicant, and, as applicable, any officer, director and principal stockholder of a corporate applicant, any controlling member of a partnership applicant and any trustee and principal beneficiary of a trust applicant shall submit information with respect to any finding of having conducted unsafe or unsound practices while employed as an officer, director, or trustee of a banking organization or having been removed as an officer, director, or trustee of a banking organization by any bank regulatory agency.

(g) Personal and financial information. As applicable, each individual applicant, each director, the three most senior executive officers and, if different, any officer(s) in charge of the New York operations of the registered mortgage broker and principal stockholder of a corporate applicant, each controlling member of a partnership applicant, or trustee and principal beneficiary of a trust applicant shall file a credit report and a personal history questionnaire which may be obtained from the [Banking] Department. Each principal stockholder shall complete a personal financial questionnaire. All of the above shall file an authority to release information form.

(h) Personnel. List all of applicant's W-2 employees (name and social security number), excluding clerical staff unless involved in the actual mortgage brokerage business, with their titles and a statement of occupational activities. List all persons (name and social security number) for whom an undertaking of accountability will be filed.

(i) Minimum experience qualifications. Set forth the name of the person who meets the minimum experience qualifications as described in Part 410 of this Title. That person shall be either an owner, general partner, trustee or executive officer of the applicant, as applicable,

and shall be actively engaged in the daily operations of the mortgage broker. Indicate the category that best describes the type of experience:

- (1) real estate broker;
- (2) credit experience;
- (3) relevant business experience;
- (4) attorney.

(j) Corporate, partnership or trade style documents to be submitted, as applicable:

- (1) a copy of the certificate of incorporation;
- (2) a copy of the qualification to do business in this state;
- (3) a copy of the certificate of limited or general partnership;
- (4) a copy of an executed partnership agreement;
- (5) a Certificate of the county clerk that a trade name or "doing business as" certificate has been filed in the office of the county clerk pursuant to section 130 of the General Business Law; and
- (6) a copy of an executed trust agreement.

(k) Other documents to be submitted:

(1) fingerprint cards (New York State NON-CRIMINAL and FBI) for each individual applicant, executive officer, director and principal stockholder of a corporate applicant, controlling member of a partnership applicant, or trustee and principal beneficiary of a trust applicant, together with such fees as may be required for processing the fingerprints;

(2) affidavit of ownership filed by the applicant;

(3) litigation affidavit describing any legal proceedings against the applicant or against any executive officer, director or principal stockholder of a corporate applicant, controlling member of a partnership applicant, or trustee or principal beneficiary of a trust applicant;

(4) taxpayer identification information form for the applicant; and

(5) credit report for each individual applicant, executive officer, director and principal stockholder of a corporate applicant, controlling member of a partnership applicant, or trustee and principal beneficiary of a trust applicant.

### TITLE 3. BANKING DIVISION

SUPERVISORY PROCEDURE MB 103  
APPLICATION FOR A CHANGE IN CONTROL OF A MORTGAGE BANKER  
(Statutory authority: Banking Law § 594-b)

- 103.1 General information
  - 103.2 Application forms and assistance
  - 103.3 Definitions
  - 103.4 Information and documents required to be submitted
- Section 103.1 General information.

Section 103.1 General information.

(a) General requirements. Any person or entity seeking to acquire control of a mortgage banker under section 594-b of the Banking Law shall submit to the Superintendent of Financial Services Superintendent") an application on Form MB-103 containing the information and documents required by section 103.4 of this Supervisory Procedure, accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. A separate check that may be either certified, bank check or money order payable to the "New York State [Banking] Department of Financial Services" to cover the processing of the New York State and FBI fingerprints cards is to be included. The application, questionnaires and other related documents shall be filed in duplicate under oath with the Mortgage Banking Division of the [State Banking] Department of Financial Services ("Department").

(b) Time periods. All of the information and documents required to be submitted by an applicant pursuant to this Supervisory Procedure shall be supplied to the Superintendent. The statutory period for approval or disapproval set forth in section 594-b(2) of the Banking Law shall commence on the date that the [Banking] Department has received both the applicable filing fee and an application determined by the [Banking] Department to be complete and prepared in accordance with this Supervisory Procedure.

(c) Execution. Each copy of the application shall be signed by the applicant. If the applicant is a partnership, corporation, trust or other entity, the application shall be signed by a partner, authorized executive officer or trustee as applicable. A corporate applicant shall submit a copy of the corporate resolution authorizing the officer to sign the application on behalf of the corporation. Each person signing the application shall:

- (1) certify that the Superintendent will be promptly advised of any changes which may occur in the information furnished in the application subsequent to the date upon which the information was furnished; and
- (2) affirm, under penalty of perjury, that the application was reviewed and that the application does not make any untrue statement of a material fact or omit any material fact necessary in order that the application not be misleading.

If the application is executed outside of New York State, a county clerk's certificate authenticating the signatures of the notaries taking the acknowledgements must be affixed to the application.

(d) Additional information and in-person conferences. The Superintendent reserves the right to require additional information in connection with the application. 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 applicant appear at the [Banking] Department for conferences. The applicant may submit any additional information it deems pertinent to the application.

(e) Notification. If, as a result of the acquisition, there will be changes in the locations where the examination of the mortgage banker is to be conducted or other address changes involving the location of the items listed below, [the] Mortgage Banking Division should be notified at the time of application or as soon as the decision to make the change has been made:

- (1) examination (8) person in overall
- (2) mortgage files charge
- (3) accounting records (9) person in charge of
- (4) executive offices New York operations
- (5) internal auditing department (10) contact for
- (6) servicing department regulatory matters
- (7) mailing address(11) contact for financial matters

#### 103.2 Application forms and assistance.

Application forms and assistance in preparing such applications may be obtained through [the] Mortgage Banking Division [of the Banking Department], at the address set forth in section 1.1 of Supervisory Policy G 1.

#### 103.3 Definitions.

For purposes of this Supervisory Procedure:

(a) Person and control are as defined in Section 594-b(4) of the Banking Law.

(b) Affiliate is any person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

(c) Subsidiary is any company, a majority of the voting stock of which is directly or indirectly owned, controlled or held with power to vote, by an applicant or any entity controlled by an applicant.

(d) Executive officer is any officer who participates or has authority to participate in major policy-making functions of the institution, regardless of his or her title.

(e) Controlling member of a partnership is any general partner or any limited partner with 10 percent or more equity interest in the partnership.

(f) Principal stockholder is any person who directly or indirectly owns, controls or holds with power to vote 10 percent or more of any class of outstanding capital stock of a corporation or possesses the power to direct or cause the direction of the management and policies of a mortgage banker.

(g) Principal beneficiary is any person or entity entitled to 10 percent or more of the benefit of the trust.

103.4 Information and documents required to be submitted.

A person seeking to acquire control of a mortgage banker must submit information and documents as set forth below:

(a) Name and address of mortgage banker and applicant. Set forth the name, address, principal place of business, telephone and fax numbers of the applicant and of the mortgage banker in which an interest is being acquired. If applicable, also state any trade or fictitious names which have been or will be used by the applicant.

(b) Type of qualifying experience. Each mortgage banker must have a person with the qualifying experience, as described in Part 410 of this Title, as either an owner, general partner, trustee or executive officer of the corporation. Such person shall be actively engaged in the daily operations of the mortgage banker. State the name of the person who, subsequent to the proposed change of control, will have such experience.

(c) Organizational structure and ownership of applicant. State whether the applicant is an individual, corporation, partnership or trust. If an individual, set forth the name, residence address and telephone and fax numbers of the individual applicant. If a corporation, set forth the name, residence address, telephone and fax numbers and percent of each class of outstanding capital stock owned by each executive officer, director and principal stockholder. If a partnership, set forth the name, residence address, telephone and fax numbers and percentage ownership of each controlling member of the partnership. If a trust, set forth the name, residence address and telephone and fax numbers of each trustee and principal beneficiary of the trust. If a corporation, list the number and percentage of stock owned by each stockholder owning less than 10 percent of any class of the outstanding capital stock. If a partnership, state where the Articles of Partnership were filed and the date of filing. If a corporation, indicate the state of incorporation and the date of filing. List the complete name and address of any branch, subsidiary, or other affiliate of the applicant operating in this State.

(d) Name and address of principal contact person. Set forth the name, complete address and telephone and fax numbers of the person(s) having general responsibility for the applicant to whom all communications from the [Banking] Department should be addressed and the person(s) responsible for regulatory and financial matters.

(e) Licenses received. List all states in which the applicant, under this or any other name, or any entity controlled by the applicant, is licensed to engage in any of the following: banking, insurance, sales finance, small loan, mortgage lending, insurance premium financing, real estate or securities, together with the name of the operating company and the name and address of the agency responsible for supervising the person or entity. Also, list any professional licenses held by any of the foregoing.

(f) Prior applications. The applicant, under this or any other name, any subsidiary or other affiliate of the applicant, and, as applicable, any officer, director and principal stockholder of a corporate applicant, any controlling member of a partnership applicant and trustee and principal beneficiary of a trust applicant shall submit information with respect to any refusal, revocation or suspension of license(s), registration(s) or authorization(s) to do business in this or any other state and/or any prior bankruptcy adjudications or criminal convictions in this or any other state.

(g) Unsafe or unsound banking practices. The applicant, under this or any other name, any subsidiary or other affiliate of the applicant, and,

as applicable, any officer, director and principal stockholder of a corporate applicant, any controlling member of a partnership applicant and any trustee and principal beneficiary of a trust applicant shall submit information with respect to any finding of having conducted unsafe or unsound practices while employed as an officer, director, or trustee of a banking organization or having been removed as an officer, director, or trustee of a banking organization by any bank regulatory agency.

(h) Financial information. The applicant shall file:

(1) an audited consolidated financial statement of the mortgage banker (only if the most recent financial statement has not been filed with the [Banking] Department) prepared by an independent certified public accountant as of the close of its most recent fiscal year end with an opinion prepared by an independent certified public accountant showing an adjusted net worth of no less than \$250,000;

(2) if the applicant is a corporation, partnership or trust, a financial statement, audited if available, for the previous two years and unaudited financial statements of the applicant for each fiscal quarter since the end of the most recent fiscal year end;

(3) written documentation that a line of credit of not less than \$1,000,000, provided by an unaffiliated banking institution, insurance company or similar credit facility approved by the Superintendent will remain in effect after the change of control; and

(4) a pro forma financial statement for the successor company, if applicable, showing an adjusted net worth of no less than \$250,000.

(i) Personal information. As applicable, each individual applicant, each director, the three most senior executive officers and, if different, any officer(s) in charge of the New York operations of the licensed mortgage banker and principal stockholder of a corporate applicant, each controlling member of a partnership applicant or trustee and principal beneficiary of a trust applicant shall complete a personal history questionnaire obtained from the [Banking] Department. All of the above shall file an authority to release information form. As applicable, each individual applicant, each director, the three most senior executive officers and, if different, any officer(s) in charge of the New York operations of the licensed mortgage banker and principal stockholder of a corporate applicant, each controlling member of a partnership applicant, or trustee and principal beneficiary of a trust applicant shall submit a signed and acknowledged current, personal financial statement.

(j) Description of acquisition. Describe the acquisition indicating the purpose, source of funds, financing terms, if applicable, and any contemplated changes in the organizational structure, management and staffing of the existing licensee.

(k) Corporate, partnership, trust or trade style documents of the applicant to be submitted, as applicable:

(1) a copy of the certificate of incorporation;

(2) a copy of the qualification to do business in this State;

(3) a copy of the certificate of limited or general partnership;

(4) a copy of an executed partnership agreement;

(5) a certificate of the county clerk that a trade name or "doing business as" certificate has been filed in the office of the county clerk pursuant to section 130 of the General Business Law;

(6) a copy of an executed trust agreement; and

(7) a copy of any contract of sale or purchase agreement.

(1) Other documents to be submitted:

(1) affidavit of ownership filed by the applicant;

(2) litigation affidavit describing any legal proceedings against the

applicant and against any executive officer, director or principal stockholder of a corporate applicant, controlling member of a partnership applicant, or trustee or principal beneficiary of a trust applicant;

(3) fingerprint cards (New York State NON-CRIMINAL and FBI) for each individual applicant, executive officer, director and principal stockholder of a corporate applicant, controlling member of a partnership applicant, or trustee and principal beneficiary of a trust applicant, together with such fees as may be required for processing the fingerprints;

(4) a background report for each individual applicant, executive officer, director and principal stockholder of a corporate applicant, controlling member of a partnership applicant, or trustee and principal beneficiary of a trust applicant (names of acceptable companies that supply such reports may be obtained from [the Banking Department's] Mortgage Banking Division);

(5) executed Certificate of Compliance in accordance with Section 296-a of the Executive Law;

(6) taxpayer identification information form for the applicant; and

(7) a surety bond in the principal sum of \$50,000 or an executed deposit agreement coupled with a pledged deposit of securities, funds or other assets in the amount of \$50,000 valued at the lower of principal amount or market, pursuant to Part 410 of this Title. Such bond or deposit agreement must be approved by the Superintendent. Model forms may be obtained from [the]Mortgage Banking [Division].

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE MB104

APPLICATION FOR A CHANGE IN CONTROL OF A MORTGAGE BROKER

(Statutory authority: Banking Law § 594-b)

- 104.1 General information
- 104.2 Application forms and assistance
- 104.3 Definitions
- 104.4 Information and documents required to be submitted

Section 104.1 General information.

(a) General requirements. Any person or entity seeking to acquire control of a mortgage broker under section 594-b of the Banking Law shall submit to the Superintendent of Financial Services ("Superintendent") an application on Form MB-104 containing the information and documents required by section 104.4 of this Supervisory Procedure, accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. A separate check that may be either certified, bank check or money order payable to the "New York[State Banking] Department of Financial Services" to cover the processing of the New York State and FBI fingerprints cards is to be included. The application, questionnaires and other related documents shall be filed in duplicate under oath with the Mortgage Banking Division [of the State Banking Department].

(b) Time periods. All of the information and documents required to be submitted by an applicant pursuant to this Supervisory Procedure shall be supplied to the Superintendent. The statutory period for approval or disapproval set forth in section 594-b(2) of the Banking Law shall commence on the date that the [Banking] Department of Financial Services ("Department") has received both the applicable filing fee and an application determined by the [Banking] Department to be complete and prepared in accordance with this Supervisory Procedure.

(c) Execution. Each copy of the application shall be signed by the applicant. If the applicant is a partnership, corporation, trust or other entity, the application shall be signed by a partner, authorized executive officer or trustee as applicable. A corporate applicant shall submit a copy of the corporate resolution authorizing the officer to sign the application on behalf of the corporation. Each person signing the application shall:

(1) certify that the Superintendent will be promptly advised of any changes which may occur in the information furnished in the application subsequent to the date upon which the information was furnished; and

(2) affirm, under penalty of perjury, that the application was reviewed and that the application does not make any untrue statement of a material fact or omit any material fact necessary in order that the application not be misleading. If the application is executed outside of New York State, a county clerk's certificate authenticating the signatures of the notaries taking the acknowledgements must be affixed to the application.

(d) Additional information and in-person conferences. The Superinten-

dent reserves the right to require additional information in connection with the application. 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 applicant appear at the [Banking] Department for conferences. The applicant may submit any additional information it deems pertinent to the application.

(e) Notification. If, as a result of the acquisition, there will be changes in the location where the examination of the mortgage broker is to be conducted or other address changes involving the location of the items listed below, [the] Mortgage Banking Division should be notified at the time of application or as soon as the decision to make the change has been made:

- (1) examination;
- (2) mortgage files;
- (3) accounting records;
- (4) executive offices;
- (5) internal auditing department;
- (6) servicing department;
- (7) mailing address;
- (8) person in overall charge;
- (9) person in charge of New York operation;
- (10) contact for regulatory matters;
- (11) contact for financial matters;

#### 104.2 Application forms and assistance.

Application forms and assistance in preparing such applications may be obtained through [the]Mortgage Banking [Division of the Banking Department], at the address set forth in section 1.1 of Supervisory Policy G 1.

#### 104.3 Definitions.

For purposes of this Supervisory Procedure:

(a) Person and control are as defined in Section 594-b(4) of the Banking Law.

(b) Affiliate is any person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

(c) Subsidiary is any company, a majority of the voting stock of which is directly or indirectly owned, controlled or held with power to vote, by an applicant or any entity controlled by an applicant.

(d) Executive officer is any officer who participates or has authority to participate in major policy-making functions of the institution, regardless of his or her title.

(e) Controlling member of a partnership is any general partner or any limited partner with 10 percent or more equity interest in the partnership.

(f) Principal stockholder is any person who directly or indirectly owns, controls or holds with power to vote 10 percent or more of any class of outstanding capital stock of a corporation or possesses the power to direct or cause the direction of the management and policies of a mortgage broker.

(g) Principal beneficiary is any person or entity entitled to 10 percent or more of the benefit of the trust.

#### 104.4 Information and documents required to be submitted.

A person seeking control of a mortgage broker must submit information and documents as set forth below:

(a) Name and address of mortgage broker and applicant. Set forth the name, address, principal place of business, telephone and fax numbers of the applicant and of the mortgage broker in which an interest is being acquired. If applicable, also state any trade or fictitious names which have been or will be used by the applicant.

(b) Type of qualifying experience. Each mortgage broker must have a person with the qualifying experience, as described in Part 410 of this Title, as either an owner, general partner, trustee or executive officer of the corporation. Such person shall be actively engaged in the daily operation of the mortgage broker. State the name of the person who, subsequent to the proposed change of control, will have such experience and the category that best describes the type of experience:

- (1) real estate broker;
- (2) credit experience;
- (3) relevant business experience;
- (4) attorney.

(c) Organizational structure and ownership of applicant. State whether the applicant is an individual, corporation, partnership or trust. If an individual, set forth the name, residence address and telephone and fax numbers of the individual applicant. If a corporation, set forth the name, residence address, telephone and fax numbers and percent of each class of outstanding capital stock owned by each executive officer, director and principal stockholder. If a partnership, set forth the name, residence address, telephone and fax numbers and percentage ownership of each controlling member of the partnership. If a trust, set forth the name, residence address and telephone and fax numbers of each trustee and principal beneficiary of the trust. If a corporation, list the number and percentage of stock owned by each stockholder owning less than 10 percent of any class of the outstanding capital stock. If a partnership, state where the articles of partnership were filed and the date of filing. If a corporation, indicate the state of incorporation and the date of filing. List the complete name and address of any branch, subsidiary, or other affiliate of the applicant operating in this State.

(d) Name and address of principal contact person. Set forth the name, complete address and telephone and fax numbers of the person(s) having general responsibility for the applicant to whom all communications from the [Banking] Department should be addressed and the person(s) responsible for regulatory and financial matters.

(e) Personal and financial information. As applicable, each individual applicant, each director, the three most senior executive officers and, if different, any officer(s) in charge of the New York operations of the registered mortgage broker and principal stockholder of a corporate applicant, controlling member of a partnership applicant or trustee and principal beneficiary of a trust applicant shall file a credit report and a personal history questionnaire which may be obtained from the [Banking] Department. Each principal stockholder shall complete a personal financial questionnaire. All of the above shall file an authority to release information form.

(f) Prior applications. The applicant, under this or any other name, any subsidiary or other affiliate of the applicant, and, as applicable, any officer, director and principal stockholder or a corporate appli-

cant, any controlling member of a partnership applicant and any trustee and principal beneficiary of a trust applicant shall submit information with respect to any refusal, revocation or suspension of license(s), registration(s) or authorization(s) to do business in this or any other state and/or any prior bankruptcy adjudications or criminal convictions in this or any other State.

(g) Unsafe or unsound banking practices. The applicant, under this or any other name, any subsidiary or other affiliate of the applicant, and, as applicable, any officer, director and principal stockholder of a corporate applicant, any controlling member of a partnership applicant and any trustee and principal beneficiary of a trust applicant shall submit information with respect to any finding of having conducted unsafe or unsound practices while employed as an officer, director, or trustee of a banking organization or having been removed as an officer, director, or trustee of a banking organization by any bank regulatory agency.

(h) Licenses received. List all states in which the applicant under this or any other name, or any subsidiary or other affiliate of the applicant, is licensed to engage in any of the following: banking, insurance, sales finance, small loan, mortgage lending, insurance premium financing, real estate or securities, together with the name of the operating company and the name and address of the agency responsible for supervising the person or entity. Also, list any other professional licenses held by any of the foregoing.

(i) Description of acquisition. Describe the acquisition indicating the purpose, source of funds, financing terms, if applicable, and any contemplated changes in the organizational structure, management and staffing of the existing licensee.

(j) Corporate, partnership, trust or trade style documents of the applicant, to be submitted, as applicable:

- (1) a copy of the certificate of incorporation;
- (2) a copy of the qualification to do business in this State;
- (3) a copy of the certificate of limited or general partnership;
- (4) a copy of an executed partnership agreement;
- (5) a certificate of the county clerk that a trade name or "doing business as" certificate has been filed in the office of the county clerk pursuant to section 130 of the General Business Law;
- (6) a copy of an executed trust agreement; and
- (7) a copy of any contract of sale or purchase agreement.

(k) Other documents to be submitted:

(1) fingerprint cards (New York State NON-CRIMINAL and FBI) for each individual applicant, executive officer, director and principal stockholder of a corporate applicant, controlling member of a partnership applicant, or trustee and principal beneficiary of a trust applicant, together with such fees as may be required for processing the fingerprints;

(2) credit report for each individual applicant, executive officer, director and principal stockholder of a corporate applicant, controlling member of a partnership applicant, or trustee and principal beneficiary of a trust applicant;

(3) affidavit of ownership filed by the applicant;

(4) litigation affidavit describing any legal proceedings against the applicant or against any executive officer, director or principal stock-

holder of a corporate applicant, controlling member of a partnership applicant, or trustee or principal beneficiary of a trust applicant; and  
(5) taxpayer identification information form for the applicant.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE MB 105

APPLICATION BY A MORTGAGE BROKER FOR INACTIVE STATUS

(Statutory authority: Banking Law, art. 12-D;  
General Regulations of the [Banking Board] Superintendent, § 38.1[f])

- 105.1 Definitions
- 105.2 General information
- 105.3 Application assistance
- 105.4 Application and undertaking
- 105.5 Resumption of active status

Section 105.1 Definitions.

For purposes of this Supervisory Procedure:

(a) "Employee" is:

(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 person engaged in regulated activities as an associate or affiliate of any one of either a mortgage broker, mortgage banker or exempt organization which has filed an undertaking of accountability with the Superintendent of Financial Services ("Superintendent") in such form as may be prescribed by the Superintendent.

(b) Mortgage broker is any person or entity registered pursuant to article 12-D of the Banking Law and any principal stockholder(s) of a corporation or controlling member(s) of a partnership or trustee of a trust registered as a mortgage broker pursuant to article 12-D of the Banking Law.

(c) Inactive mortgage broker is any mortgage broker registered pursuant to section 591-a of the Banking Law that 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 and has filed an application to be placed on inactive status which has been approved by the Superintendent.

(d) Controlling member of a partnership is any general partner or any limited partner with 10 percent or more equity interest in the partnership.

(e) Principal stockholder is any person who directly or indirectly owns, controls or holds with power to vote 10 percent or more of any class of outstanding capital stock of a corporation or possesses the power to direct or cause the direction of the management and policies of a mortgage broker.

105.2 General Information.

(a) Need for application. No registered mortgage broker may perform the services of an employee of a mortgage broker, mortgage banker or

exempt organization while registered as a mortgage broker in his/her own right unless an application for inactive status has been filed with and approved by the Superintendent [of banks].

(b) Execution. The application shall be signed by the applicant. If the applicant is an individual, the application shall be executed by such individual and the signature shall be notarized. If the applicant is a corporation, the application shall be executed by each principal stockholder, the signature shall be notarized and the application shall be accompanied by a duly executed corporate board resolution indicating the board's approval of the application. If the applicant is a partnership, the application shall be executed by each partner and each signature shall be notarized. If the applicant is a trust, the application shall be executed by each trustee and each signature shall be notarized. The application may be executed in counter-parts, provided that all counter-parts are submitted together.

(c) Additional information and in-person conferences. The Superintendent reserves the right to require additional information in connection with the application. In the absence of the showing of undue hardship the Superintendent may also require that the applicant and any officers, directors and/or representatives of the applicant appear at the [Banking]Department of Financial Services ("Department") for conferences. The applicant may submit any additional information it deems pertinent to the application.

#### 105.3 Application assistance.

Application forms and assistance in preparing such applications may be obtained through [the] Mortgage Banking [Division of the Banking Department], at the address set forth in section 1.1 of Supervisory Policy G 1.

#### 105.4 Application and undertaking.

(a) General requirements. Any mortgage broker seeking to effectuate a change to an inactive status shall file a letter application with the Superintendent requesting the change in status and explaining the reason for such request. The application shall be accompanied by the existing valid registration certificate, which will be returned stamped inactive, and an undertaking to the Superintendent containing the following provisions:

(1) that the general assessment charged for each year of such inactive status is to be paid pursuant to sections 17 and 591-a(1) of the New York Banking Law;

(2) that at the Superintendent's discretion the inactive broker continues to be subject to an examination of its books and records, the cost of which will be borne by the mortgage broker;

(3) that a written notification of intent to resume business will be filed with the Superintendent at least 30 days prior to the resumption of business along with the registration certificate stamped inactive;

(4) that the Superintendent will be immediately notified of any change in the official address of record of the mortgage broker;

(5) that the Superintendent will be immediately notified of any change in the telephone number of record of the mortgage broker; and

(6) that an annual certification of inactive status shall be filed with the Superintendent on a form provided by the Mortgage Banking Division.

(b) Publications. The Superintendent shall publish receipt of the application in the [Banking] Department's weekly bulletin.

#### 105.5 Resumption of active status.

Within 30 days of receiving written notification of intent to resume business and the registration certificate stamped inactive, the Superintendent shall issue a new registration certificate authorizing the resumption of the mortgage brokerage business, which action shall be published in the [Banking] Department's weekly bulletin.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE MB106

APPLICATION TO ACT AS AN FHA MORTGAGE LOAN CORRESPONDENT

(Statutory authority: Banking Law, § 590(5-a))

106.1 General information

106.2 Definitions

106.3 Information and documents required to be submitted

Section 106.1 General information.

(a) Any person or entity seeking to act as an FHA mortgage loan correspondent shall submit to the Superintendent of Financial Services ("Superintendent") a letter application containing the information and documents required by section 106.3 of this Supervisory Procedure. The letter application shall be signed by the applicant. If the applicant is a partnership, corporation, trust or other entity, the application shall be signed by a controlling member, authorized executive officer or trustee as applicable. A corporate applicant shall submit a copy of the corporate resolution authorizing the officer to sign the application on behalf of the corporation. Each person signing the application shall:

(1) certify that the Superintendent will be promptly advised of any changes which may occur in the information furnished in the application subsequent to the date upon which the information was furnished; and

(2) affirm, under penalty of perjury, that the application was reviewed and that the application does not make any untrue statement of a material fact or omit any material fact necessary in order that the application not be misleading.

(b) The Superintendent reserves the right to require additional information in connection with the application. 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 applicant appear at the [Banking] Department of Financial Services for conferences. The applicant may submit any additional information it deems pertinent to the application.

(c) Assistance in preparing such applications and documentation may be obtained through the Mortgage Banking Division of the [Banking] Department, at the address set forth in section 1.1 of Supervisory Policy G 1.

106.2 Definitions. For purposes of this Supervisory Procedure:

(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(1) has as its principal activity the origination of mortgages for sale or transfer to a sponsor or sponsors or (2) satisfies the definition of a

supervised mortgagee contained in the regulations of 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 insured mortgage loan shall mean a loan made through an approved lender and insured by the Federal Housing Administration.

(h) The term FHA shall mean Federal Housing Administration.

106.3 Information and documents required to be submitted. An applicant must submit a letter application requesting approval to make FHA insured mortgage loans accompanied by the following documentation in order to obtain the approval of the Superintendent to make FHA insured mortgage loans:

(a) a copy of the FHA approval letter issued by the Director, Lender Approval and Recertification Division or similar official with equivalent status;

(b) a copy of the completed application submitted to the Department of Housing and Urban Development including all supporting documents including, but not limited to, the following:

(1) HUD Form 92001 E, Application for Approval as Mortgagee/Loan Correspondent;

(2) HUD Form 92001 C, Supplement to Application for Approval, Schedule I;

(3) HUD Form 92001 D, Supplement to Approval, Schedule II; and

(4) HUD Form 92001 B, Branch Office Notification, if applicable;

(c) the most current annual certified audit report required by HUD;

(d) letter(s) establishing sponsor funding;

(e) sponsor certification that applicant satisfies FHA requirements, if applicable;

(f) certification that applicant has not been denied an operating license or registration or otherwise been sanctioned by any licensing or regulatory body;

(g) a copy of the Quality Control Program or HUD checklist accompanied by a certification that the plan is complete and satisfies all requirements;

(h) a notarized Undertaking to the Superintendent from each sponsor which includes the following representations:

(1) that it is a licensed mortgage banker or exempt organization;

(2) that it will honor all interest rate lock-in agreements and commitments to lend and fund all FHA insured mortgages for which the applicant has obtained its underwriting approval to issue interest rate lock-in agreements or commitments to lend;

(3) that within 48 hours after termination, it will notify the Superintendent in writing of the termination of its agreement to fund all FHA insured mortgages for the loan correspondent; and

(4) that the notification it submits to the Superintendent will include the following information:

(i) the specific reason(s) for the termination of its agreement to fund all FHA insured mortgages for the loan correspondent;

(ii) a list of all outstanding loan commitments and interest rate lock-in agreements which the sponsor has approved on behalf of the loan correspondent; and

(iii) a list of any interest rate lock-in agreements and loan commitments which the sponsor does not intend to honor and the reason(s) for this decision;

(i) a surety bond in the principal sum of \$25,000, in addition to any bond required under Section 410.9 or otherwise by law or regulation, or a deposit agreement coupled with a pledged deposit of securities, funds or other assets in the amount of \$25,000 valued at the lower of principal amount or market, pursuant to Part 413 of this Title. Such bond or deposit agreement must be approved by the Superintendent. Model forms may be obtained from the Mortgage Banking Division; and

(j) such other information and documentation as shall be required by the Superintendent.

**[Changes only to Heading. No changes to text - updated through the Emergency Adoption Process]**

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE MB 107  
APPLICATION FOR INITIAL LICENSE AS A MORTGAGE LOAN ORIGINATOR;  
REQUEST FOR RENEWAL OF LICENSE

(Statutory authority: Banking Law, Art. 12-E, §599-o)

Sec.

- [107.1](#) Definitions
- [107.2](#) General information
- [107.3](#) Application for initial license
- [107.4](#) Requirements for renewal
- [107.5](#) Inactive status
- [107.6](#) Instructions and assistance

Section 107.1 Definitions.

(a) For purposes of this Supervisory Procedure:

(1) "Annual Expiration Date" has the meaning set forth in section [420.3\(a\)](#).

(2) "Mortgage Loan Originator" or MLO has the meaning set forth in [section](#) 420.3(g) of Part 420.

(3) "National Mortgage Licensing System and Registry" ("NMLS") has the [meaning](#) set forth in section 420.3(h) of Part 420.

(4) "Originating Entity" has the meaning set forth in section 420.3(i) of Part 420.

[107.2](#) General information.

(a) Application for initial license. Any individual seeking an initial license as an MLO shall submit an application for initial license. The application shall be sworn to or affirmed by the applicant and submitted in such form and in such manner as may be prescribed by the Superintendent. Applicants will be required to submit certain parts of an application electronically through the NMLS. Certain information must be submitted by mail to the Department at the address set forth in Supervisory Policy G-1.

The application form prescribed by the Superintendent and instructions on how to use the NMLS will be available on the Department's [website](#) or in links provided in the Department's website.

(b) Request for annual renewal required. An MLO seeking annual renewal of a license shall submit a request for renewal. The annual renewal request shall be sworn to or affirmed by the MLO and submitted in such form and in such manner as may be prescribed by the Superintendent.

(c) Expiration date, renewal request period. All licenses and renewals issued by the Superintendent under the provisions of Article 12-E of the

Banking Law shall expire annually on the Annual Expiration Date; provided that the license may be renewed for an additional year by:

- (1) paying the annual renewal fee;
  - (2) submitting an annual request for renewal during the renewal period announced by the Superintendent and available on the Department's website ([www.dfs.ny.gov](http://www.dfs.ny.gov)). Applicants shall submit renewal applications electronically through the NMLS. The form of renewal applicable will be available on the website of the NMLS and will also be available on the website of the [Banking] Department; and
  - (3) providing evidence that the requisite continuing education courses have been completed.
- (d) License not transferable. A license as an MLO shall not be transferable or assignable.

### 107.3 Application for initial license.

(a) Application requirements. Each applicant for a license as an MLO shall submit the following documents as part of his or her application:

(1) A completed application form, in the form prescribed by the Superintendent, a copy of which is available on the Department's website, which application shall be attested to by the applicant. An individual who was engaged in mortgage loan origination activities as of July 11, 2009, and who filed an application pursuant to the prior version of Article 12-E shall update his or her background information upon request by the Superintendent. For all such applicants, the Superintendent shall indicate when information regarding prior education, testing and bonding requirements must be submitted.

(2) Two fingerprint cards with fingerprint certification, which shall be submitted to the address specified in Section 107.2(a) above. When required by the Superintendent, an applicant who has previously submitted his or her fingerprint cards also shall submit his or her fingerprints through the NMLS.

(3) The prescribed fee, which shall be submitted electronically together with the application. A schedule of fees and a list of acceptable forms of payment shall be available at the Department's [website](http://www.dfs.ny.gov) ([www.dfs.ny.gov](http://www.dfs.ny.gov)). The fee shall consist of:

(i) an investigation fee as set forth in Section 420.17(b)(1) of the Superintendent's Regulations;

(ii) a fingerprint processing fee charged by the State Division of Criminal Justice Services and established pursuant to Article 35 of the Executive Law. If the NMLS develops the capacity to process fingerprints through the FBI, the Superintendent may as noted above 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;

(iii) a processing fee charged by the NMLS; and

(iv) an initial license fee as set forth in Section 420.17(b)(1) of the Superintendent's Regulations;

If the application is rejected or withdrawn, none of these fees will be refunded.

(4) The applicant's credit report, which shall have been issued by a recognized credit reporting agency no more than thirty days prior to the

date that the application is submitted. If the NMLS develops the capacity to process credit reports through the NMLS, the Superintendent may require an applicant to submit his or her credit report through the NMLS and to pay any processing fees required by the NMLS.

(5) An affidavit in the form prescribed by the Superintendent and subscribed by the applicant under penalty of perjury stating that:

(i) the applicant will promptly advise the Superintendent of any changes that occur in the information furnished in the application after the application is submitted; and

(ii) the applicant has personally reviewed the application and certifies that the application does not contain any untrue statement or omission of any material fact.

(b) Additional information and in-person conferences. The Superintendent may require additional information in connection with the application for an initial license, in order to determine the applicant's character and fitness. 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 affiliated appear at the [Banking] Department to present such information. The applicant may submit any additional information the applicant deems pertinent to the application for an initial license.

(c) Incomplete application.

(1) No application shall be deemed to be complete until the Superintendent has received all required information, documents and fees. If an application is determined by the Superintendent to be incomplete, the Superintendent will send written notification to the applicant indicating the items that must be addressed in order for the Department to continue the application review process.

(2) If a complete response fully addressing all such items is not received by the Department within thirty days of the sending of such notice, the Superintendent may consider the application withdrawn.

(3) Any individual seeking an initial license following withdrawal of an application shall submit a new application that includes all required information, documents and fees.

#### 107.4 Requirements for renewal.

(a) Submission Date. A completed request for renewal shall be submitted according to the schedule determined by the Superintendent and available at the Department's website at [www.dfs.ny.gov](http://www.dfs.ny.gov)).

(b) Requirements for renewal. A completed request for renewal shall consist of the following:

(1) The renewal request form, which shall be attested to by the licensed MLO and submitted electronically to the [Banking] Department through the NMLS. The information provided shall be accurate as of the date of such renewal.

(2) The annual license fee, which shall be submitted electronically together with the renewal request form, in the amount and paid by a method specified on the [Banking] Department's website ([www.dfs.ny.gov](http://www.dfs.ny.gov)).

(3) Such additional information and documents as may be prescribed by the Superintendent and listed at the [Banking] Department's website

(c) Additional information and in-person conferences. The Superintendent reserves the right to acquire additional information in connection

with the request for renewal. In the absence of a showing of undue hardship, the Superintendent may also require that the MLO requesting renewal and any officers, directors and/or representatives of the Originating Entity with which such MLO is employed or affiliated appear at the [Banking] Department to present such information. The MLO may submit any additional information he or she deems pertinent to the request for renewal.

107.5 Inactive status.

(a) An MLO may not engage in Mortgage Loan Originating during any period when the MLO is not employed by or affiliated with a mortgage broker or mortgage banker registered or licensed pursuant to Article 12-D of the Banking Law. During such period the Mortgage Loan Originator license shall be placed in inactive status and shall remain in inactive status until the Superintendent receives written or electronic notice of the MLO's new employment or affiliation with an Originating Entity.

(b) An MLO may renew his or her license while in inactive status as long as the MLO pays the renewal fee and complies with the education requirements of Article 12-E.

107.6 Instructions and assistance.

(a) Additional instructions and assistance relating to this Supervisory Procedure may be obtained

(1) at the [Banking] Department's website ([www.dfs.ny.gov](http://www.dfs.ny.gov));

(2) by e-mail ([MLO@dfs.ny.gov](mailto:MLO@dfs.ny.gov));

(3) by mail addressed to: Mortgage Banking Division, New York State Department of Financial Services, One State Street, New York, NY 10004-1417; (4) or by calling the Mortgage Banking Division at (212) 709-3535.

### TITLE 3. BANKING DIVISION

\* SUPERVISORY PROCEDURE MB 109  
APPLICATION FOR REGISTRATION AS A MORTGAGE LOAN SERVICER

Sec.

[109.1](#) Definitions

[109.2](#) General information

[109.3](#) Registration application

[109.4](#) Information and documents required to be submitted

[Section](#) 109.1 Definitions.

For purposes of this Supervisory Procedure:

(a) "Mortgage Loan Servicer" or "MLS" has the meaning set forth in [section](#) 418.3 of Part 418 of the Superintendent's Regulations.

(b) "Third Party Servicer" has the meaning set forth in section 418.3 of Part 418 of the Superintendent's Regulations.

(c) "National Mortgage Licensing System and Registry" or "NMLSR" means the web-based system developed and from time to time modified by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators or their designees that allows Mortgage Loan Servicers to apply for, amend, update or renew a registration in New York as well as in other participating states. The system also uses the trade name "NMLS".

(d) "Executive Officer" is any officer who participates or has authority to participate in major policy-making functions of the institution, regardless of his or her title.

(e) "Controlling Member" of a partnership means any general partner or any limited partner with 10 percent or more equity interest in the partnership.

(f) "Affiliate" is any person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

(g) "Subsidiary" is any company, a majority of the voting stock of which is directly or indirectly owned, controlled or held with power to vote, by an applicant or any entity controlled by an applicant.

(h) "Net Worth" shall have the meaning set forth in section 418.12(a) of Part 418 of the Superintendent's Regulations.

(i) "Principal Stockholder" is any person who directly or indirectly owns, controls or holds with power to vote 10 percent or more of any class of outstanding capital stock of a corporation or possesses the power to direct or cause the direction of the management and policies of a mortgage loan servicer.

(j) "Principal Beneficiary" is any person or entity entitled to 10 percent or more of the benefit of a trust.

(k) "Surety Bond" means the bond required by Section 418.12(b) of Part 418 of the Superintendent's Regulations.

(l) "Fidelity and E & O Bond" means the bond or evidence of coverage required by Section 418.12(c) of Part 418 of the Superintendent's Regulations.

#### 109.2 General information.

Any person or entity seeking to register as an MLS shall submit an application for registration. The application shall be submitted in such form and in such manner as may be prescribed by the Superintendent. Applicants will be required to submit certain parts of an application electronically through the NMLSR. Information to be submitted by mail should be sent to the Department at the address set forth in G-1.

The application form prescribed by the Superintendent and instructions on how to use the NMLSR will be available on the Department's website as set forth in Section 1.1 of Supervisory Policy G 1 or in links provided in the Department's website.

#### 109.3 Registration application.

(a) Application requirements. Each applicant for registration as an MLS shall submit the following documents as part of its application:

(1) A completed application form, in the form prescribed by the Superintendent, a copy of which is available on the Department's website, which application shall be attested to by the applicant.

(2) Fingerprint cards with fingerprint certification, which shall be submitted to the address specified in Section 109.2 above.

(3) The prescribed fees, which shall be submitted electronically together with the application. A schedule of fees and a list of acceptable forms of payment shall be available at the Department's website as set forth in Section 1.1 of Supervisory Policy G 1. The fees shall consist of:

- i. An investigation fee in the amount, if any, specified in section 18-a of the Banking Law;
- ii. Fingerprint processing fees collected by the State Division of Criminal Justice Services and/or the NMLSR; and
- iii. A processing fee charged by the NMLSR.

If the application is denied or withdrawn, none of these fees will be refunded.

(b) Execution. The application shall contain the acknowledgement and attestation of the applicant. If the applicant is a partnership, corporation, trust or other entity, the acknowledgment and attestation shall be made by a Controlling Member, authorized Executive Officer or trustee as applicable. A corporate applicant shall submit a copy of the corporate resolution authorizing the officer to execute the application on behalf of the corporation. Each person executing the application shall:

(1) certify that the Superintendent will be promptly advised of any changes which may occur in the information furnished in the application subsequent to the date upon which the information was furnished; and

(2) affirm, under penalty of perjury, that such person has reviewed the application and that the application does not make any untrue statement of a material fact or omit any material fact necessary in order that the application not be misleading.

If the application is executed outside of New York State, a county clerk's certificate authenticating the signatures of the notaries taking the acknowledgments must be affixed to the application.

(c) Additional information and in-person conferences. The Superintendent reserves the right to require additional information in connection with the application. 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 applicant appear at the Department for conferences. The applicant may submit any additional information it deems pertinent to the application.

#### 109.4 Information and documents required to be submitted.

Each applicant for registration as a Mortgage Loan Servicer shall submit information and documents as set forth below:

(a) Name and address of applicant. Set forth the name, address, principal place of business and telephone and fax numbers of the applicant. If applicable, also state any trade or fictitious names which have been or will be used by the applicant.

(b) Organizational structure and ownership of applicant. State whether the applicant is an individual, corporation, partnership or trust. If an individual, set forth the name, residence address and telephone and fax numbers of the individual applicant. If a corporation, set forth the name, residence address, telephone and fax numbers and percent of each class of outstanding capital stock owned by each Executive Officer, Director and Principal Stockholder. If a partnership, set forth the name, residence address, telephone and fax numbers and percentage ownership of each Controlling Member of the partnership. If a trust, set forth the name, residence address and telephone and fax numbers of each trustee and Principal Beneficiary of the trust. If a corporation, list the number and percentage of stock owned by each stockholder owning not less than 10 percent of any class of the outstanding capital stock. If a partnership, state where the articles of partnership were filed and the date of filing. If a corporation, indicate the state of incorporation and the date of filing. List the complete name and address of any branch, Subsidiary, or other Affiliate of the applicant operating in this State.

(c) Name and address of principal contact person. Set forth the name, complete address and telephone and fax numbers of the person(s) having general responsibility for the applicant to whom all communications from the Department should be addressed and the person(s) responsible for regulatory and financial matters.

(d) Licenses received. List all states in which the applicant, under this or any other name, or any Subsidiary or other Affiliate of the applicant, is licensed to engage in any of the following businesses:

banking, insurance, sales finance, small loan, mortgage lending, mortgage loan servicing, insurance premium financing, real estate or securities, together with the name of the operating company and the name and address of the agency responsible for supervising the person or entity. Also, list any other professional licenses held by any of the foregoing.

(e) Prior applications. The applicant, under this or any other name, any Subsidiary or other Affiliate of the applicant, and, as applicable, any officer, director and Principal Stockholder of a corporate applicant, any Controlling Member of a partnership applicant and any trustee and Principal Beneficiary of a trust applicant shall submit information with respect to any refusal, revocation or suspension of license(s) in this or any other state and/or any prior bankruptcy adjudications or criminal convictions in this or any other state.

(f) Unsafe or unsound banking practices. The applicant, under this or any other name, any Subsidiary or other Affiliate of the applicant, and, as applicable, any Executive Officer, director and Principal Stockholder of a corporate applicant, any Controlling Member of a partnership applicant and any trustee and Principal Beneficiary of a trust applicant shall submit information with respect to any finding of having engaged in unsafe or unsound practices while employed as an officer, director, or trustee of a banking organization or having been removed as an officer, director, or trustee of a banking organization by any bank regulatory agency.

(g) Financial information; financial responsibility requirements.

(1) Unless exempted as provided in subsection (a) of Section 418.14 of Part 418 of the Superintendent's Regulations, the applicant, at the time of application, shall submit audited annual financial statements showing net worth as of the close of its most recent fiscal year of at least \$250,000 plus (A) 1/4 of 1% of the outstanding principal balance of loans to be serviced or (B) if such applicant will be solely a Third-Party Servicer, 1/4 of 1% of the outstanding principal amount of New York mortgage loans for which it will be a Third-Party Servicer, or (C) if such applicant will be a Third Party Servicer with respect to certain mortgage loans and will own other mortgage loans or the servicing rights thereto, 1/4 of 1% of the outstanding principal balance of the non-Third Party Servicer loans and 1/4 of 1% of the outstanding principal amount of the New York mortgage loans for which it is a Third-Party Servicer. In addition, the applicant shall submit the most recent quarterly financial statements subsequent to such annual statements. If the applicant is a corporation, partnership or trust, financial statements, audited if available, shall be submitted for the previous two years if the applicant was in existence for that period. If applicable, submit the most recent consolidated audited annual financial statements of the applicant's ultimate parent corporation.

(2) Unless the Superintendent determines otherwise, prior to obtaining a license the applicant shall file a Surety Bond in the principal sum of not less than \$250,000 in a form satisfactory to the Superintendent. Surety Bond forms may be obtained from the Mortgage Banking [Unit]Division of the Department.

(3) Prior to obtaining a license the applicant shall also file Fidelity and E&O Bonds in an amount based on its anticipated volume of business, but in no event less than the principal sum of \$300,000, in a form

satisfactory to the Superintendent. Fidelity and E&O Bond forms may be obtained from the Mortgage Banking Division of the Department.

(h) Personal information. As applicable, each individual applicant, each director, the three most senior Executive Officers and, if different, any officer(s) in charge of the New York operations of the applicant and the Principal Stockholder of a corporate applicant, each Controlling Member of a partnership applicant, or trustee and Principal Beneficiary of a trust applicant shall complete a personal history questionnaire obtained from the Department. Each such person shall file an authority to release information form. As applicable, each individual applicant, each director, the three most senior Executive Officers, and, if different, any officer(s) in charge of the New York operations of the applicant and the Principal Stockholder of a corporate applicant, each Controlling Member of a partnership applicant, or trustee and Principal Beneficiary of a trust applicant shall submit a signed and acknowledged current personal financial statement.

(i) Minimum experience qualifications. Set forth the name of the person who meets the minimum experience qualifications described in Part [418.11\(a\)](#) of this Title. That person shall be either an owner, general partner, trustee or Executive Officer of the applicant, as applicable, and shall be actively engaged in the daily operations of the applicant.

(j) Corporate, partnership or trade style documents to be submitted, as applicable:

- (1) A copy of the certificate of incorporation;
- (2) A copy of the qualification to do business in this State;
- (3) A copy of the certificate of limited or general partnership;
- (4) A copy of an executed partnership agreement;
- (5) A certificate of the county clerk or Secretary of State, as may be appropriate, that a trade name or "doing business as" certificate has been filed pursuant to section 130 of the General Business Law; and
- (6) A copy of an executed trust agreement.

(k) Other documents to be submitted:

- (1) Affidavit of ownership filed by the applicant;
- (2) Litigation affidavit describing any legal proceedings against the applicant or against any Executive Officer, Director or Principal Stockholder of a corporate applicant, Controlling Member of a partnership applicant, or trustee or Principal Beneficiary of a trust applicant;
- (3) Fingerprint cards (New York State NON-CRIMINAL and FBI) for each individual applicant, Executive Officer, director and Principal Stockholder of a corporate applicant, Controlling Member of a partnership applicant, or trustee and Principal Beneficiary of a trust applicant, together with such fees as may be required for processing the fingerprints;
- (4) A background report for each individual applicant, Executive Officer, director and Principal Stockholder of a corporate applicant, Controlling Member of a partnership applicant, or trustee and Principal Beneficiary of a trust applicant (names of acceptable companies that supply such reports may be obtained from the Mortgage Banking **[Unit] Division** of the Department);
- (5) Taxpayer identification information form for the applicant; and
- (6) Unless exempted, a surety bond and Fidelity and E&O bonds, each in the principal sum specified in subsection (g) of this section.

(1) Checklist. A checklist of the information and documents required to be submitted with the application for registration as a Mortgage Loan Servicer may be found on the Department's website set forth in Section [1.1](#) of Supervisory Policy G 1 along with the instructions for completing and submitting the application.

### TITLE 3. BANKING DIVISION

#### \* SUPERVISORY PROCEDURE MB 110

#### APPLICATION FOR A CHANGE IN CONTROL OF A MORTGAGE LOAN SERVICER

Sec.

110.1 Definitions

110.2 General information

110.3 Change of control application

110.4 Information and documents required to be submitted

Section 110.1 Definitions.

For purposes of this Supervisory Procedure:

(a) "Mortgage Loan Servicer" or "MLS" has the meaning set forth in section 418.3 of Part 418.

(b) "Change in control" shall have the meaning set forth in Section 418.8 of the Superintendent's Regulations.

(c) "National Mortgage Licensing System and Registry" or "NMLSR" means the web-based system developed and from time to time modified by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators or their designees that allows Mortgage Loan Servicers to apply for, amend, update or renew a registration in New York as well as in other participating states. The system also uses the trade name "NMLS".

(d) "Executive Officer" is any officer who participates or has authority to participate in major policy-making functions of the entity, regardless of his or her title.

(e) "Controlling Member" of a partnership means any general partner or any limited partner with 10 percent or more equity interest in the partnership.

(f) "Affiliate" is any person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

(g) "Subsidiary" is any company, a majority of the voting stock of which is directly or indirectly owned, controlled or held with power to vote, by an applicant or any entity controlled by an applicant.

(h) "Net Worth" shall have the meaning set forth in section 418.12(a) of Part 418 of the Superintendent's Regulations.

(i) "Principal Stockholder" is any person who directly or indirectly owns, controls or holds with power to vote 10 percent or more of any class of outstanding capital stock of a corporation or possesses the power to direct or cause the direction of the management and policies of a mortgage loan servicer.

(j) "Principal Beneficiary" means any person or entity entitled to 10 percent or more of the benefit of the trust.

(k) "Surety Bond" means the bond required by Section 418.12(b) of the Superintendent's Regulations.

(l) "E&O Bond" means the bond or bonds required by Section 418.12(c) of the Superintendent's Regulations.

110.2 General information.

(a) General requirements. Any person or entity seeking approval to acquire control of a Mortgage Loan Servicer shall submit an application in such form and in such manner as may be prescribed by the Superintendent.

Applicants will be required to submit certain parts of an application electronically through the NMLSR. Information to be submitted by mail should be sent to the Department at the address set forth in section 1.1 of Supervisory Procedure G 1.

The application form prescribed by the Superintendent and instructions on how to use the NMLSR will be available on the Department's website set forth in Section 1.1 of Supervisory Policy G1 or in links provided in the Department's website.

### 110.3 Change of control application.

(a) Application requirements. Each applicant for approval of a change of control of an MLS shall submit the following documents as part of its application:

(1) A completed application form, in the form prescribed by the Superintendent, a copy of which is available on the Department's website, which application shall be attested to by the applicant.

(2) Fingerprint cards with fingerprint certification, which shall be Submitted to the address specified in Section 110.2 above.

(3) The prescribed fees, which shall be submitted electronically together with the application. A schedule of fees and a list of acceptable forms of payment shall be available at the Department's website set forth in Section 1.1 of Supervisory Policy G1. The fees shall consist of:

(i) An investigation fee in the amount, if any, specified in section 18-a of the Banking Law;

(ii) Fingerprint processing fees collected by the State Division of Criminal Justice Services and/or the NMLSR; and

(iii) A processing fee charged by the NMLSR.

If the application is denied or withdrawn, none of these fees will be refunded.

(b) Time periods. The Superintendent shall approve or disapprove the application in writing within ninety days after the date the application is filed with the Superintendent. The period for approval or disapproval shall commence on the date that the Department has received both the applicable filing fee and an application determined by the Department to be complete and prepared in accordance with this Supervisory Procedure.

(c) Execution. The application shall contain the acknowledgement and attestation of the applicant. If the applicant is a partnership, corporation, trust or other entity, the acknowledgement and attestation shall be made by a Controlling Member, authorized Executive Officer or trustee as applicable. A corporate applicant shall submit a copy of the corporate resolution authorizing the officer to execute the application on behalf of the corporation. Each person executing the application shall:

(1) Certify that the Superintendent will be promptly advised of any changes which may occur in the information furnished in the application subsequent to the date upon which the information was furnished; and

(2) Affirm, under penalty of perjury, that such person has reviewed the application and that the application does not make any untrue statement of a material fact or omit any material fact necessary in order that the application not be misleading. If the application is executed outside of New York State, a county clerk's certificate authenticating the signatures of the notaries taking the acknowledgements must be affixed to the application.

(d) Additional information and in-person conferences. The Superintendent reserves the right to require additional information in connection with the application. 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 applicant appear at the Department for conferences. The applicant may submit any additional information it deems pertinent to the application.

(e) Notification. If, as a result of the acquisition, there will be changes in the locations where the examination of the Mortgage Loan Servicer is to be conducted or other address changes involving the location of the items listed below, the Mortgage Banking [unit] Division of the Department should be notified at the time of application or as soon as the decision to make the change has been made:

- (1) Examination;
- (2) Mortgage servicing files;
- (3) Accounting records;
- (4) Executive offices;
- (5) Internal auditing department;
- (6) Servicing department;
- (7) Mailing address;
- (8) Person in overall charge;
- (9) Person in charge of New York operations;
- (10) Contact for regulatory matters;
- (11) Contact for financial matters.

#### 110.4 Information and documents required to be submitted.

A person seeking to acquire control of a Mortgage Loan Servicer shall submit information and documents as set forth below:

(a) Name and address of mortgage loan servicer and applicant. Set forth the name, address, principal place of business, telephone and fax numbers of the applicant and of the Mortgage Loan Servicer in which an interest is being acquired. If applicable, also state any trade or fictitious names which have been or will be used by the applicant.

(b) Type of qualifying experience. Each Mortgage Loan Servicer must have a person with the qualifying experience, as described in Part 418 of this Title, as either an owner, general partner, trustee or Executive Officer of the corporation. Such person shall be actively engaged in the daily operations of the mortgage loan servicer. State the name of the person who, subsequent to the proposed change of control, will have such experience.

(c) Organizational structure and ownership of applicant. State whether the applicant is an individual, corporation, partnership or trust. If an individual, set forth the name, residence address and telephone and fax

numbers of the individual applicant. If a corporation, set forth the name, residence address, telephone and fax numbers and percent of each class of outstanding capital stock owned by each Executive Officer, Director and Principal Stockholder. If a partnership, set forth the name, residence address, telephone and fax numbers and percentage ownership of each Controlling Member of the partnership. If a trust, set forth the name, residence address and telephone and fax numbers of each trustee and Principal Beneficiary of the trust. If a corporation, list the number and percentage of stock owned by each stockholder owning not less than 10 percent of any class of the outstanding capital stock. If a partnership, state where the articles of partnership were filed and the date of filing. If a corporation, indicate the state of incorporation and the date of filing. List the complete name and address of any branch, Subsidiary, or other Affiliate of the applicant operating in this State.

(d) Name and address of principal contact person. Set forth the name, complete address and telephone and fax numbers of the person(s) having general responsibility for the applicant to whom all communications from the Department should be addressed and the person(s) responsible for regulatory and financial matters.

(e) Licenses received. List all states in which the applicant, under this or any other name, or any Subsidiary or other Affiliate of the applicant, is licensed to engage in any of the following businesses: banking, insurance, sales finance, small loan, mortgage lending, mortgage loan servicing, insurance premium financing, real estate or securities, together with the name of the operating company and the name and address of the agency responsible for supervising the person or entity. Also, list any professional licenses held by any of the foregoing.

(f) Prior applications. The applicant, under this or any other name, any Subsidiary or other Affiliate of the applicant, and, as applicable, any officer, director and Principal Stockholder of a corporate applicant, any Controlling Member of a partnership applicant and trustee and Principal Beneficiary of a trust applicant shall submit information with respect to any refusal, revocation or suspension of license(s), registration(s) or authorization(s) to do business in this or any other state and/or any prior bankruptcy adjudications or criminal convictions in this or any other state.

(g) Unsafe or unsound banking practices. The applicant, under this or any other name, any Subsidiary or other Affiliate of the applicant, and, as applicable, any Executive Officer, director and Principal Stockholder of a corporate applicant, any Controlling Member of a partnership applicant and any trustee and Principal Beneficiary of a trust applicant shall submit information with respect to any finding of having conducted unsafe or unsound practices while employed as an officer, director, or trustee of a banking organization or having been removed as an officer, director, or trustee of a banking organization by any bank regulatory agency.

(h) Financial information; financial responsibility requirements.

The applicant shall file:

(1) Unless exempted as provided in subsection (a) of Section 418.13 of the Superintendent's Regulations, an audited consolidated annual financial statement of the applicant prepared by an independent certified public accountant as of the close of its most recent fiscal year end with an

opinion prepared by an independent certified public accountant showing net worth at the close of its most recent fiscal year of at least \$250,000 plus (A) 1/4 of 1% of the outstanding principal balance of loans to be serviced or (B) if such applicant will be solely a Third-Party Servicer, 1/4 of 1% of the outstanding principal amount of New York mortgage loans for which it will be a Third-Party Servicer, or (C) if such applicant will be a Third-Party Servicer with respect to certain mortgage loans and will own other mortgage loans or the servicing rights thereto, 1/4 of 1% of the outstanding principal balance of the non-Third Party Servicer loans and 1/4 of 1% of the outstanding principal amount of the New York mortgage loans for which it is a Third-party servicer;

(2) If the applicant is a corporation, partnership or trust, annual financial statements, audited if available, for the previous two years and unaudited financial statements of the applicant for each fiscal quarter since the end of the most recent fiscal year end;

(3) Evidence, satisfactory to the Superintendent, that the proposed change of control will not adversely affect the continued coverage of the registrant either under its existing Surety Bond or under a substitute Surety Bond acceptable to the Superintendent;

(4) Evidence, satisfactory to the Superintendent, that the proposed change of control will not adversely affect the continued coverage of the registrant either under its existing Fidelity and E&O Bonds or under substitute Fidelity and E&O Bonds acceptable to the Superintendent; and

(5) A pro forma financial statement for the successor company, if applicable, showing net worth of at least \$250,000 plus (A) 1/4 of 1% of the outstanding principal balance of New York mortgage loans or (B) if such successor company will be solely a Third-Party Servicer, 1/4 of 1% of the outstanding principal amount of New York mortgage loans for which it will be a Third-Party Servicer, or (C) if such successor company will be a Third-Party Servicer with respect to certain mortgage loans and will own other mortgage loans or the servicing rights thereto, 1/4 of 1% of the outstanding principal balance of the non-Third Party Servicer loans and 1/4 of 1% of the outstanding principal amount of the New York mortgage loans for which it is a Third-Party Servicer;

(i) Personal information. As applicable, each individual applicant, each director, the three most senior Executive Officers and, if different, any officer(s) who will be in charge of the New York operations of the MLS and each Principal Stockholder of a corporate applicant, each Controlling Member of a partnership applicant or trustee and Principal Beneficiary of a trust applicant shall complete a personal history questionnaire obtained from the Department. Each such person shall file an authority to release information form. As applicable, each individual applicant, each director, the three most senior Executive Officers and, if different, any officer(s) who will be in charge of the New York operations of the MLS and the Principal stockholders of a corporate applicant, each Controlling Member of a partnership applicant, or trustee and Principal Beneficiary of a trust applicant shall submit a signed and acknowledged current personal financial statement.

(j) Description of acquisition. Describe the proposed transaction which will result in a change of control, indicating the purpose, source of funds, financing terms, if applicable, and any contemplated changes in the

organizational structure, management and staffing of the existing Mortgage Loan Servicer.

(k) Corporate, partnership, trust or trade style documents of the applicant to be submitted, as applicable:

- (1) A copy of the certificate of incorporation;
- (2) A copy of the qualification to do business in this State;
- (3) A copy of the certificate of limited or general partnership;
- (4) A copy of an executed partnership agreement;
- (5) A certificate of the county clerk or Secretary of State, as may be appropriate, that a trade name or "doing business as" certificate has been filed pursuant to section 130 of the General Business Law;
- (6) A copy of an executed trust agreement; and
- (7) A copy of any contract of sale or purchase agreement.

(l) Other documents to be submitted:

- (1) Affidavit of ownership filed by the applicant;
- (2) Litigation affidavit describing any legal proceedings against the applicant and against any Executive Officer, director or Principal Stockholder of a corporate applicant, Controlling Member of a partnership applicant, or trustee or Principal Beneficiary of a trust applicant;
- (3) Fingerprint cards (New York State NON-CRIMINAL and FBI) for each individual applicant, Executive Officer, director and Principal Stockholder of a corporate applicant, Controlling Member of a partnership applicant, or trustee and Principal Beneficiary of a trust applicant, together with such fees as may be required for processing the fingerprints;
- (4) A background report for each individual applicant, Executive Officer, director and Principal Stockholder of a corporate applicant, Controlling Member of a partnership applicant, or trustee and Principal Beneficiary of a trust applicant (names of acceptable companies that supply such reports may be obtained from the Mortgage Banking [Unit]Division of the Department); and
- (5) Taxpayer identification information form for the applicant.

(m) Checklist. A checklist of the information and documents required to be submitted with the application to acquire control of a Mortgage Loan Servicer may be found on the Department's website set forth in Section 1.1 of Supervisory Policy G1 along with the instructions for completing and submitting the application.

## SAVINGS BANKS

### TITLE 3. BANKING DIVISION

#### SUPERVISORY POLICY SB 1

##### AUTHORIZATION OF TRUST POWERS FOR SAVINGS BANKS

(Statutory authority: Banking Law, §§14[1], 234-b)

- 1.1 General statement
- 1.2 General criteria
- 1.3 Specific requirements
- 1.4 Application of other laws and regulations

Section 1.1 General statement. Pursuant to the provisions of section 234-b of the Banking Law, the [Banking Board] Superintendent of Financial Services (the "Superintendent") is prepared to authorize a State-chartered savings bank to exercise, through a trust department, any or all of the powers specified in sections 100, 100-a, 100-b and 100-c of the Banking Law, in accordance with applicable law, provided that:

- (a) the granting of such powers to the institution will promote the convenience and advantage of the public; and
- (b) the proposed management of the trust department commands confidence and warrants the belief that the business of such department will be honestly and efficiently conducted in accordance with the intent and purpose of applicable law.

1.2 General criteria. In passing upon an application pursuant to section 234-b, the [Banking Board] Superintendent will consider, in addition to any other facts or circumstances deemed proper, the following:

- (a) the financial condition of the applicant;
- (b) the qualifications and experience of the proposed officer or officers of the trust department and the nature of the supervision to be exercised over the fiduciary activities;
- (c) the type or types of fiduciary activities proposed to be undertaken; and
- (d) the plan of operations of the applicant's trust department, including information as to the manner in which legal, accounting, investment and recordkeeping functions of such department are to be performed and information as to any plans to obtain related services from outside sources.

1.3 Specific requirements. An application for authority to exercise any fiduciary power shall consist of:

- (a) a certified copy of a resolution of the applicant's board of trustees, authorizing the applicant to file the application and to undertake the fiduciary activities specified in the application; and
- (b) a written statement covering the matters specified in section

1.2(b)-(d) of this Part and such other matters as the [Banking Department] Department of Financial Services shall request after consultation with the applicant.

1.4 Application of other laws and regulations. The provisions of Supervisory Procedure CB 119 shall apply to any savings bank which proposes to establish a common trust fund, and the provisions of Part 22 of this Title shall apply to any savings bank maintaining such a fund. The terms trust company and board of directors, as used in CB 119 and Part 22, shall be deemed to mean the trust department of a savings bank and board of trustees of a savings bank, respectively.

### TITLE 3. BANKING DIVISION

#### SUPERVISORY PROCEDURE SB 101

##### APPLICATION FOR SAVINGS BANK BRANCH OFFICES

(Statutory authority: Banking Law, § 29)

101.1 General information

101.2 Application for community afforded home office protection

Section 101.1 General information.

(a) A savings bank which seeks permission to open a branch office should file an application therefor with the Superintendent of Financial Services (the "Superintendent") at the address set forth in section 1.1 of Supervisory Policy G 1, which meets the requirements of this supervisory procedure, accompanied by payment of the fee specified by section 1.2 of Supervisory Policy G 1. The words "branch", "office" and "offices" as used in this supervisory procedure shall include limited purpose branches, but shall not include automated teller machines, point-of-sale terminals or similar facilities.

(b) In accordance with Supervisory Procedure G 106 (Public Access to [Banking Department] Department of Financial Services Records), the entire application and all supporting material are available for public inspection except for confidential material. If the applicant believes that the public availability or disclosure of certain of the information provided would be clearly harmful, such information should be segregated from the public portion and labeled "Confidential." The applicant must also state the reasons under Section 87(2) of the Freedom of Information Law for any request for confidentiality.

(c) The [Banking Department] Department of Financial Services (the Department") processes branch applications using either an expedited application process or a standard application process. An institution is eligible for the expedited process if it satisfies all of the following criteria:

- (1) Has a composite CAMELS rating of "1" or "2";
- (2) Has at least a satisfactory ("2") rating for management;
- (3) Is well capitalized in accordance with applicable Federal standards;
- (4) Has a CRA rating of "Satisfactory" or better; and
- (5) Has no major unresolved supervisory issues outstanding (as determined by the [Banking] Department in its discretion).

Application requirements are set forth by the Superintendent [of Banks]. Forms and instructions may be obtained directly from the Department, and are available on the Department's Website (**Error! Hyperlink reference not valid.** [dfs.ny.gov](http://dfs.ny.gov)).

(d) An application should be filed concurrently with the appropriate Federal supervisory authority if Federal approval is also required. An applicant may submit information to the [Banking] Department by submitting a

copy of the appropriate Federal or uniform state application and providing cross-references to the information contained therein. Such Federal or uniform state applications shall be supplemented where necessary to comply with the [Banking] Department's specific application requirements.

101.2 Application for community afforded home office protection.

The [Banking] Department will not accept applications for branch offices in communities from which the applicant would be barred, at the time of filing, under the home office protection provisions of the New York Banking Law provided, however, such a branch application may be accepted for filing if there exists on such date any application with the appropriate regulatory authorities which would, if approved, eliminate the protection provisions of section 240 of the New York Banking Law. No final action will be taken on such branch application until home office protection will have ceased under New York Banking Law.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE SB 110  
MERGER OF SAVINGS AND LOAN ASSOCIATION  
OR SAVINGS BANK INTO SAVINGS BANK

Section 110.1 General information.

(a) The instructions set forth in this Procedure shall apply to a merger proposed pursuant to Banking Law, section 600(2) and (4), where the surviving institution is a savings bank.

(b) A separate application shall be filed with respect to each merger for which the approval of the Superintendent of Financial Services (the "Superintendent" is sought and eight copies thereof, together with all exhibits thereto, including two executed copies of the exhibits referred to in section 110.3(a)-(c) of this Procedure, shall be filed with the Superintendent at the address set forth in section 1.1 of Supervisory Policy G 1. The application shall contain the information specified in sections 110.2 and 110.3 of this Procedure and shall 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) The approvals required by this subdivision shall be obtained before the application for the Superintendent's approval is submitted:

(1) The plan of merger shall be approved, in the manner prescribed by Banking Law, section 601(3), by the board of trustees of each savings bank and the board of directors of each association which is a party to the merger.

(2) If any party to be merged is an association, the plan of merger shall be approved at a meeting held upon not less than 30 days' written notice to each shareholder by the vote, in person or by proxy, of at least 66 2/3 percent of all the votes cast at the meeting (the voting rights of shareholders to be determined as prescribed in the bylaws of the association). Notice of the shareholders' meeting, together with any proxy material, shall be served personally upon or mailed to each shareholder of the association at his last known address and shall contain a statement of the time and place of the meeting, a full and clear statement of the purpose of the meeting and the effect of the proposed merger, if consummated, upon the shareholders' right to vote on matters affecting the management of the surviving institution.

(d) Approval by the Superintendent will be conditioned in all cases upon the insurance by the Federal Deposit Insurance Corporation of deposit accounts acquired as a result of the merger to the extent permitted by Federal law.

(e) If the surviving savings bank plans to maintain as a branch one or more offices or maintain as its principal office the principal office of any bank or association being merged, the plan of merger must specifically provide therefor as required by Banking Law, section 240(2)(d).

(f) After the merger, the powers of the surviving savings bank, including its powers to receive new deposits, make new loans and undertake new borrowings, will be subject to the laws governing savings banks, except to the extent it has, as a result of the merger, succeeded to certain deposits, loans and borrowings which are legal for an association but not legal for a savings bank. While the surviving bank will ordinarily be required to dispose of such deposits, loans and borrowings within two years after the date of the merger, it may discharge any legal obligations previously undertaken by the association in connection with such nonconforming deposits, loans and borrowings. The plan of merger must specifically describe, by type and amount, such nonconforming deposits, loans and borrowings, and indicate the manner in which they are to be disposed of by the surviving savings bank.

(g) The Superintendent reserves the right to require additional information in connection with the application. The applicants may, of course, submit any information in addition to that required by this Procedure which they deem pertinent to the application.

(h) Unless otherwise indicated, all statistical data required to be submitted in the application (e.g., as to deposits and loans) shall be furnished as of the December 31st preceding the date of submission.

#### 110.2 Information required in the application.

(a) General information. Set forth the name and address of the applicants; the name and address of the officer to whom all communications from the [Banking Department] Department of Financial Services should be addressed; and the date or proposed date of filing of any required applications or other documents with the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) Banking offices. List the name and address of the principal office of each party to the proposed merger and of the surviving bank; the branch office locations of each party; the road distance between the nearest offices of each party and the offices, if any, which will be closed if the application is approved.

(c) Deposits. (1) Number and volume. List in tabular form the number of accounts and dollar amount of deposits of each party to the merger, by type of account and type of depositor, as of December 31st for each of the preceding three years.

(2) Primary and secondary service areas. Indicate the deposits, by number of accounts and dollar amount, which originate in the primary service area and the secondary service area, respectively, of each party to the merger. This computation should also be made for any office if the service area thereof is reasonably close to or overlaps any service area of the other party or any of its offices. The term primary service area, of a bank, association or any office thereof, means the area from which is derived approximately 75 percent of the dollar amount of deposits based on the record addresses of the depositors thereof.\* The term secondary service area, of a bank, association or any office thereof, means the area contiguous to but outside of the primary service area from which is derived approximately an additional 15 percent of the dollar amount of deposits based on the record addresses of the depositors thereof.\*

(3) Overlap. Indicate the deposits, by number of accounts and dollar amount, that each party to the merger draws from the primary and secondary service areas of the other, separately itemized for savings and other time deposits.

(4) Rates. For each party, describe the rates paid on savings and other time deposits and the methods of computation. If any of the rates or the methods of computation differ between the parties to the merger, include a statement specifically indicating how the differences will be resolved if the application is approved.

(d) Loans. (1) Breakdown of loans. For each party, list in tabular form for each of the preceding three calendar years the breakdown of all major types of loans outstanding on each December 31st. The breakdown should be by number and dollar amount of loans on properties located (a) without New York State; (b) within New York State; and (c) within such party's primary and secondary service areas. Major types of loans should include at least the following categories: (i) FHA and VA loans on one- and two-family residences; (ii) conventional loans on one- and two-family residences; (iii) FHA and VA loans on other residential properties; (iv) conventional loans on other residential properties; and (v) nonresidential mortgage loans.

(2) Overlap. Indicate the outstanding mortgage loans, by number and dollar amount, of each party to the merger on properties located in the primary and secondary service areas of the other party, separately itemized for each major type of loan.

(3) Loan policies. Describe the policies of each party with respect to the rates charged and the maximum maturities and maximum loan-value ratios on the major types of loans offered by such party. If any of the policies differ between the parties to the merger, include a statement specifically indicating how the differences will be resolved if the application is approved.

(4) Participations. List the loan participations, by number and dollar amount, which each party to the merger has originated or participated in during the three preceding calendar years and the amount of such party's participation. List the participants in each such case.

(e) Other information. (1) Economic characteristics. Describe the economic characteristics of each party's primary and secondary service areas and the population and average income, growth trend during the preceding 10-year period and current economic outlook thereof.

(2) Management. List the names, ages and salaries of the senior executive and administrative officers of each party to the merger, including the composition of the board of trustees or board of directors and any advisory or similar committee, together with a brief summary of the educational background, banking experience and other qualifications of each such officer. Provide similar information with respect to the proposed management of the surviving savings bank. If management succession is a problem for any party to the merger, indicate specifically what attempts have been made in recent years to recruit management personnel and state how the merger is expected to solve the management succession problem.

(3) Inducements. State whether any consideration, monetary or otherwise, has been paid, given or offered to any shareholder, director,

trustee or officer of any party, or to any other person, as compensation or inducement for assistance in consummating the proposed merger, and the details thereof and reasons therefor.

(f) Reasons for approval. Include a separate statement setting forth in detail the reasons why the applicants believe the application should be approved, including a discussion as to: (1) whether the proposed merger will meet specific needs for banking services in the designated service areas which are not now being met; (2) the competitive consequences of the proposed merger within the designated service areas; and

(3) the manner in which the proposed merger will otherwise serve the public interest.

#### 110.3 Exhibits.

The following exhibits shall be filed as part of the application:

(a) Plan of merger, setting forth the terms and conditions of the merger, executed by each party to the merger and otherwise complying with the requirements of Banking Law, section 601.

(b) Copies of resolutions adopted by the board of directors of each association to be merged and by the trustees of each savings bank which is a party to the merger, certified in each case, by the president or secretary of the association or bank, that the meeting was held and the plan of merger adopted in compliance with the requirements of Banking Law, section 601(3).

(c) If any party to the merger is an association, a copy of the minutes of a meeting of the shareholders thereof at which the plan of merger was approved, including attached copies of the notice to shareholders, proxy material and plan of merger in the form submitted to the shareholders. The president or secretary of the association shall certify that (i) the notice to shareholders and proxy material were served personally or mailed to each shareholder at his last known address at least 30 days prior to the shareholders' meeting, and (ii) the plan of merger in the form attached was the plan submitted to the shareholders at such meeting, and was approved at the meeting by the vote, in person or by proxy, of at least 66-2/3% of all the votes cast at the meeting. Such certificate shall also indicate the actual vote of the shareholders for and against the plan of merger.

(d) A statement as of the preceding December 31 of the assets and liabilities of each party to the merger and, on a pro forma basis of the surviving savings bank.

(e) Copies of the income and expense reports of each party to the merger (as reported to the supervisory authorities) for each of the three preceding calendar years and, on a pro forma basis, of the surviving savings bank for the preceding calendar year.

(f) A statement showing a 12-months' projection for the surviving savings bank of (1) the asset structure, (2) the indicated yield for each asset category and for total assets, (3) earnings, (4) book net worth, (5) ratio of book net worth to total assets, and (6) liquidity. Describe any anticipated material changes in the business of the surviving savings bank which will affect projected net worth.

(g) Maps, indicating (1) the primary and secondary service areas of each party to the merger, (2) the location of the respective offices of each of the parties and (3) the location, except in the case of a service area wholly within New York City, of every commercial bank, savings bank and savings and loan association office located in or near such primary and secondary service areas. A key to office numbers, scale of miles and compass points should be provided.

(h) Copy of the proposed by-laws for the surviving bank.

(i) Copies of any agreements, in addition to the plan of merger, relating to the merger.

110.4 Additional documents. The following additional documents shall be submitted to the Superintendent as they become available to the parties:

(a) Copies of all approvals obtained pursuant to Federal law and regulations.

(b) Opinion of counsel for each party to the merger as to compliance of that party with all requirements of Federal and State law in connection with the merger.

110.5 Confidential information.

The following information is considered confidential and should be furnished on separate pages which can be detached from the rest of the application:

(a) that portion of the plan of merger which specifically describes nonconforming deposits, loans and borrowings (see section 110.1(f)), as required;

(b) the computation of deposits for any office of each party to the merger required by section 110.2(c) (2);

(c) the listing of loan participations and loan participants required by section 110.2 (d) (6);

(d) the information required by section 110.2 (e) (2);

(e) the income and expense reports required by section 110.3(e);

(f) the statement required by section 110.3(f).

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\* The computation may be based on a fair sampling of accounts.

# SAVINGS AND LOAN ASSOCIATIONS

## TITLE 3. BANKING DIVISION

### SUPERVISORY POLICY SL 1

#### AUTHORIZATION FOR TRUST POWERS FOR SAVINGS AND LOAN ASSOCIATIONS

(Statutory authority: Banking Law, §§ 14(1), 380-h)

- 1.1 General statement
- 1.2 General criteria
- 1.3 Specific requirements
- 1.4 Application of other laws and regulations

Section 1.1 General statement.

Pursuant to the provisions of section 380-h of the Banking Law, the [Banking Board] Superintendent of Financial Services ("Superintendent") is prepared to authorize a State-chartered savings and loan association to exercise through a trust department any or all of the powers specified in sections 100, 100-a, 100-b and 100-c of the Banking Law in accordance with applicable law, provided that:

(a) the granting of such powers to the institution will promote the convenience and advantage of the public; and

(b) the proposed management of the trust department commands confidence and warrants the belief that the business of such department will be honestly and efficiently conducted in accordance with the intent and purposes of applicable law.

1.2 General criteria. In passing upon an application pursuant to section 380-h, the [Banking Board] Superintendent will consider, in addition to any other facts or circumstances deemed proper, the following:

(a) the financial condition of the applicant;

(b) the qualifications and experience of the proposed officer or officers of the trust department and the nature of the supervision to be exercised over the fiduciary activities;

(c) the type or types of fiduciary activities proposed to be undertaken; and

(d) the plan of operations of the applicant's trust department, including information as to the manner in which legal, accounting, investment and recordkeeping functions of such department are to be performed and information as to any plans to obtain related services from outside sources.

1.3 Specific requirements. An application for authority to exercise any fiduciary power shall consist of:

(a) a certified copy of a resolution of the applicant's board of directors, authorizing the applicant to file the application and to undertake the fiduciary activities specified in the application; and

(b) a written statement covering the matters specified in section 1.2(b)-(d) of this Supervisory Policy and such other matters as the [Banking Department] Department of Financial Services shall request after consultation with the applicant.

1.4 Application of other laws and regulations. The provisions of Supervisory Procedure CB 119 shall apply to any savings and loan association which proposes to establish a common trust fund, and the provisions of Part 22 of this Title shall apply to any savings and loan association maintaining such a fund. The term trust company, as used in CB 119 and Part 22 of this Title, shall be deemed to mean the trust department of a savings and loan association.

### TITLE 3. BANKING DIVISION

#### SUPERVISORY PROCEDURE SL 101

##### APPLICATION FOR SAVINGS AND LOAN ASSOCIATION BRANCH OFFICES (Statutory authority: Banking Law, § 29)

101.1 General information

101.2 Application for community afforded home office protection

Section 101.1 General information.

(a) A savings and loan association that seeks permission to open a branch office should file an application therefor with the Superintendent of Financial Services ("Superintendent") as set forth in section 1.1 of Supervisory Policy G 1, which meets the requirements of this supervisory procedure, accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1. The words "branch", "office" and "offices" as used in this supervisory procedure shall include limited purpose branches, but shall not include automated teller machines, point-of-sale terminals or similar facilities.

(b) In accordance with Supervisory Procedure G 106 (Public Access to [Banking] Department of Financial Services Records), the entire application and all supporting material are available for public inspection except for confidential material. If the applicant believes that the public availability or disclosure of certain of the information provided would be clearly harmful, such information should be segregated from the public portion and labeled "Confidential." The applicant must also state the reasons under Section 87(2) of the Freedom of Information Law for any request for confidentiality.

(c) The [Banking] Department of Financial Services ("Department") processes branch applications using either an expedited application process or a standard application process. An institution is eligible for the expedited process if it satisfies all of the following criteria:

- (1) Has a composite CAMELS rating of "1" or "2";
- (2) Has at least a satisfactory ("2") rating for management;
- (3) Is well capitalized in accordance with applicable Federal standards;
- (4) Has a CRA rating of "Satisfactory" or better; and
- (5) Has no major unresolved supervisory issues outstanding (as determined by the [Banking] Department in its discretion).

Application requirements are set forth by the Superintendent [of Banks]. Forms and instructions may be obtained directly from the Department, and are available on the Department's Website (**Error! Hyperlink reference not**

**valid.**[dfs.ny.gov](https://dfs.ny.gov)).

(d) An application should be filed concurrently with the appropriate Federal supervisory authority if Federal approval is also required. An applicant may submit information to the [Banking] Department by submitting a copy of the appropriate Federal or uniform state application and providing cross-references to the information contained therein. Such Federal or uniform state applications shall be supplemented where necessary to comply with the [Banking] Department's specific application requirements.

101.2 Application for community afforded home office protection.

The [Banking] Department will not accept applications for branch offices in communities from which the applicant would be barred, at the time of filing, under the home office protection provisions of the New York Banking Law provided, however, such a branch application may be accepted for filing if there exists on such date any application with the appropriate regulatory authorities which would, if approved, eliminate the protection provisions of section 396 of the New York Banking Law. No final action will be taken on such branch application until home office protection will have ceased under New York Banking Law.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE SL 110

MERGER OF SAVINGS AND LOAN ASSOCIATION OR SAVINGS BANK  
INTO A SAVINGS AND LOAN ASSOCIATION

- 110.1 General information
- 110.2 Information required in the application
- 110.3 Exhibits
- 110.4 Additional documents
- 110.5 Confidential information

Section 110.1 General information.

(a) The instructions set forth in this Procedure shall apply to a merger proposed pursuant to Banking Law, section 600(3) and (4), where the surviving institution is a savings and loan association.

(b) A separate application shall be filed with respect to each merger for which the approval of the Superintendent of Financial Services ("Superintendent") is sought and eight copies thereof, together with all exhibits thereto, including two executed copies of the exhibits referred to in section 110.3(a)-(c) of this Procedure, shall be filed with the Superintendent, at the address set forth in section 1.1 of Supervisory Policy G 1. The application shall contain the information specified in sections 110.2 and 110.3 of this Procedure 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 the application for the Superintendent's approval is submitted, the following approvals shall be obtained:

(1) the plan of merger shall be approved, in the manner prescribed by Banking Law, section 601(3), by the board of directors of each savings and loan association and the board of trustees of each savings bank which is a party to the merger; and

(2) the board of trustees of each such savings bank shall approve, in the manner prescribed by Banking Law, section 277, the discontinuance of a life insurance department operated by such savings bank pursuant to article VI-A of the Banking Law.

(d) Approval by the Superintendent will be conditioned in all cases upon the insurance by the Federal Savings and Loan Insurance Corporation of deposit accounts acquired as a result of the merger to the extent permitted by Federal law.

(e) If the surviving association plans to maintain as a branch office one or more offices, or maintain as its principal office the principal office of any bank or association being merged, the plan of merger must specifically provide therefor.

(f) After the merger, the powers of the surviving savings and loan association will be subject to the laws governing savings and loan associations, except to the extent it has, as a result of the merger,

succeeded to any deposits, loans and borrowings which are legal for a savings bank but not legal for an association. While the surviving association will ordinarily be required to dispose of such deposits, loans and borrowings within two years after the date of the merger, it may discharge any legal obligations previously undertaken by the bank in connection with such nonconforming deposits, loans and borrowings. The plan of merger must specifically describe, by type and amount, any such nonconforming deposits, loans and borrowings, and indicate the manner in which they are to be disposed of by the surviving association.

(g) The Superintendent reserves the right to require additional information in connection with the application. The applicants may, of course, submit any information in addition to that required by this Procedure which they deem pertinent to the application.

(h) Unless otherwise indicated, all statistical data required to be submitted in the application shall be furnished as of the December 31st preceding the date of submission.

#### 110.2 Information required in the application.

(a) General information. Set forth the name and address of the applicants; the name and address of the officer to whom all communications from the [Banking] Department of Financial Services should be addressed; and the date or proposed date of filing of any required applications or other documents with the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank System.

(b) Banking offices. List the name and address of the principal office of each party to the proposed merger and of the surviving savings and loan association; the branch office locations of each party; the road distance between the nearest offices of each party and the offices, if any, which will be closed if the application is approved.

(c) Deposits. (1) Number and volume. List in tabular form the number of accounts and dollar amount of deposits of each party to the merger, by type of account and type of depositor, as of December 31st for each of the preceding three years. For purposes of this Procedure, the terms deposits and depositors include shares and shareholders of any association.

(2) Primary and secondary service areas. Indicate the deposits, by number of accounts and dollar amount, which originate in the primary service area and the secondary service area, respectively, of each party to the merger. This computation should also be made for any office if the service area thereof is reasonably close to or overlaps any service area of the other party or any of its offices. The term primary service area, of a bank, association or any office thereof, means the area from which is derived approximately 75 percent of the dollar amount of deposits based on the record addresses of the depositors thereof.\* The term secondary service area, of a bank, association or any office thereof, means the area contiguous to but outside of the primary service area from which is derived approximately an additional 15 percent of the dollar amount of deposits based on the record addresses of the depositors thereof.\*

(3) Overlap. Indicate the deposits, by number of accounts and dollar amount, that each party to the merger draws from the primary and secondary

service areas of the other, separately itemized for savings and other time deposits.

(4) Rates. For each party, describe the rates paid on savings and other time deposits and the methods of computation. If any of the rates or the methods of computation differ between the parties to the merger, include a statement specifically indicating how the differences will be resolved if the application is approved.

(d) Loans. (1) Breakdown of loans. For each party, list in tabular form for each of the preceding three calendar years the breakdown of all major types of loans outstanding on each December 31st. The breakdown should be by number and dollar amount of loans on properties located (a) without New York State; (b) within New York State; and (c) within such party's primary and secondary service areas. Major types of loans should include at least the following categories: (i) FHA and VA loans on one- and two-family residences; (ii) conventional loans on one- and two-family residences; (iii) FHA and VA loans on other residential properties; (iv) conventional loans on other residential properties; and (v) nonresidential mortgage loans.

(2) Overlap. Indicate the outstanding mortgage loans, by number and dollar amount, of each party to the merger on properties located in the primary and secondary service areas of the other party, separately itemized for each major type of loan.

(3) Loan policies. Describe the policies of each party with respect to the rates charged and the maximum maturities and maximum loan-value ratios on the major types of loans offered by such party. If any of the policies differ between the parties to the merger, include a statement specifically indicating how the differences will be resolved if the application is approved.

(4) Participation. List the loan participations, by number and dollar amount, which each party to the merger has originated or participated in during the three preceding calendar years, and the amount of such party's participation. List the participants in each such case.

(e) Other information. (1) Economic characteristics. Describe the economic characteristics of each party's primary and secondary service areas and the population and average income, growth trend during the preceding 10-year period and current economic outlook thereof.

(2) Management. List the names, ages and salaries of the senior executive and administrative officers of each party to the merger, including the composition of the board of trustees or board of directors and any advisory or similar committee, together with a brief summary of the educational background, banking experience and other qualifications of each such officer. Provide similar information with respect to the proposed management of the surviving savings and loan association. If management succession is a problem for any party to the merger, indicate specifically what attempts have been made in recent years to recruit management personnel and state how the merger is expected to solve the management succession problem.

(3) Inducements. State whether any consideration, monetary or otherwise, has been paid, given or offered to any shareholder, director, trustee or officer of any party, or to any other person, as compensation

or inducement for assistance in consummating the proposed merger, and the details thereof and reasons therefor.

(f) Reasons for approval. Include a separate statement setting forth in detail the reasons why the applicants believe the application should be approved, including a discussion as to: (1) whether the proposed merger will meet specific needs for banking services in the designated service areas which are not now being met; (2) the competitive consequences of the proposed merger within the designated service areas; and (3) the manner in which the proposed merger will otherwise serve the public interest.

#### 110.3 Exhibits.

The following exhibits shall be filed as part of the application:

(a) Plan of merger, setting forth the terms and conditions of the merger, executed by each party to the merger and otherwise complying with the requirements of Banking Law, section 601.

(b) Copies of resolutions adopted by the board of directors of each association and by the board of trustees of each savings bank which is a party to the merger, certified in each case by the president or secretary of the association or bank as to compliance with the requirements of Banking Law, section 601(3).

(c) Copy of resolution adopted by the board of trustees of each savings bank which is a party to the merger and which operates a life insurance department pursuant to article VI-A of the Banking Law, approving the discontinuance of such department, certified by the president or vice-president and the treasurer or assistant treasurer of the bank as to compliance with the requirements of Banking Law section 277.

(d) A statement as of the preceding December 31 of the assets and liabilities of each party to the merger and, on a pro forma basis, of the surviving savings and loan association.

(e) Copies of the income and expense reports of each party to the merger (as reported to the supervisory authorities) for each of the three preceding calendar years and, on a pro forma basis, of the surviving savings and loan association for the preceding calendar year.

(f) A statement showing a 12-months' projection for the surviving savings and loan association of (1) the asset structure, (2) the indicated yield for each asset category and for total assets, (3) earnings, (4) book net worth, (5) ratio of book net worth to total assets and (6) liquidity. Describe any anticipated material changes in the business of the surviving savings and loan association which will affect projected net worth.

(g) Maps, including (1) the primary and secondary service areas of each party to the merger, (2) the location of the respective offices of each of the parties and (3) the location, except in the case of a service area wholly within New York City, of every commercial bank, savings bank and savings and loan association office located in or near such primary and secondary service areas. A key to office numbers, scale of miles and compass points should be provided.

(h) Copy of the proposed by-laws for the surviving association.

(i) Copies of any agreements, in addition to the plan of merger, relating to the merger.

#### 110.4 Additional documents.

The following additional documents shall be submitted to the Superintendent as they become available to the parties:

(a) Copies of all approvals obtained pursuant to Federal law and regulations.

(b) Opinion of counsel for each party to the merger as to compliance of that party with all requirements of Federal and State law in connection with the merger.

110.5 Confidential information.

The following information is considered confidential and should be furnished on separate pages which can be detached from the rest of the application:

(a) that portion of the plan of merger which specifically describes nonconforming deposits, loans and borrowings (see section 110.1(f)), as required;

(b) the computation of deposits for any office of each party to the merger required by section 110.2(c) (2);

(c) the listing of loan participations and loan participants required by section 110.2(d) (6);

(d) the information required by section 110.2(e) (2);

(e) the income and expense reports required by section 110.3(e); and

(f) the statement required by section 110.3(f).

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\*The computation may be based on a fair sampling of accounts.

### TITLE 3. BANKING DIVISION

#### SUPERVISORY PROCEDURE SL 111

#### CONVERSION OF SAVINGS AND LOAN ASSOCIATION INTO SAVINGS BANK

- 111.1 General information
- 111.2 Documents required
- 111.3 Additional documents

Section 111.1 General information.

(a) A savings and loan association which seeks to convert itself into a savings bank pursuant to Banking Law, section 411 shall comply with the instructions set forth in this Supervisory Procedure SL 111.

(b) Six copies of a letter of application and each document referred to in section 111.2, including two executed copies of the documents referred to in subdivisions (a), (b), (c) and (f) of section 111.2, shall be filed with the Superintendent of Financial Services ("Superintendent"),

at the address set forth in section 1.1 of Supervisory Policy G 1, and shall be accompanied by payment of the fee specified in section 1.2 of Supervisory Policy G 1; provided, however, that the organization certificate required by subdivision (b) of section 111.2 shall be filed only after receipt of the Superintendent's written approval of the proposed conversion. Inquiries concerning the preparation thereof should be addressed to the Superintendent. The letter of application shall set forth the name and address of the officer to whom all communications from the [Banking] Department of Financial Services should be addressed and the date or proposed date of filing of any required applications or other documents with the Federal Deposit Insurance Corporation.

(c) Before an application for conversion is submitted, the plan of conversion shall be approved by the vote, in person or by proxy, of the holders of at least 66 2/3 percent in amount of book value of all outstanding shares of the association represented at a meeting held upon not less than 20 days' written notice to each shareholder. Notice of the shareholders' meeting, together with any proxy material, shall be served personally upon or mailed to each shareholder at his last known address and shall contain a statement of the time and place of the meeting, a full and clear statement of the purpose thereof and the effect of the proposed conversion upon the shareholder's right to vote on matters affecting the management of the resulting savings bank.

(d) Approval by the Superintendent will be conditioned in all cases upon the insurance by the Federal Deposit Insurance Corporation of deposit accounts of the resulting bank to the extent permitted by Federal law.

(e) After the conversion, the powers of the resulting savings bank, including its powers to receive new deposits, make new loans and undertake new borrowings will be subject to the laws governing savings banks, except to the extent it has as a result of the conversion succeeded to

certain deposits, loans and borrowings which are legal for an association but not legal for a savings bank. While the resulting bank will ordinarily be required to dispose of such deposits, loans and borrowings within two years after the date of the conversion, it may discharge any legal obligations which it had previously undertaken, as an association, in connection with such nonconforming deposits, loans and borrowings. The plan of conversion must specifically describe, by type and amount, such nonconforming deposits, loans and borrowings, and indicate the manner in which they are to be disposed of by the resulting savings bank.

(f) The Superintendent reserves the right to require additional information in connection with the application. The applicant may, of course, submit any information in addition to that required by this procedure which it deems pertinent to the application.

#### 111.2 Documents required.

The following documents shall be filed as part of the application:

(a) Plan of conversion, signed by the president of the association 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 trustees of the proposed savings bank.

(b) Organization certificate, as required by Banking Law, section 230, executed by a majority of the directors of the association and by all of the persons who are to be the initial trustees of the proposed savings bank.

(c) Minutes of the meeting of shareholders of the association authorizing the conversion, including the notice to shareholders, proxy material and plan of conversion in the form submitted to shareholders, certified by the presiding officer and by the secretary of the meeting and otherwise in accordance with Banking Law, section 411. The presiding officer and the secretary of the meeting shall certify that

(1) the notice of the meeting and proxy material were served personally or mailed to each shareholder at his last known address at least 20 days prior to the shareholders' meeting and

(2) the plan of conversion in the form attached was the plan submitted to the shareholders at such meeting, and was approved by the vote, in person or by proxy, of the holders of at least 66 2/3 percent in amount of book value of all outstanding shares of the association represented at the meeting held for that purpose in accordance with Banking Law, section 411. Such certificate shall also indicate the actual vote of the shareholders for and against the plan of conversion.

(d) Proposed by-laws of the resulting savings bank, as required by Banking Law, section 251.

(e) A statement setting forth the reasons why the board of directors believe the conversion would be in the best interests of the savings and loan association and the public.

#### 111.3 Additional documents.

The following additional documents shall be submitted to the superintendent as they become available to the association:

(a) Copies of all approvals and notices required by Federal law and regulations in connection with the conversion.

(b) Opinion of counsel for the association as to compliance with all requirements of Federal and State law in connection with the conversion.

**TITLE 3. BANKING DIVISION**

SUPERVISORY PROCEDURE SL 112

CONVERSION OF FEDERAL SAVINGS AND  
LOAN ASSOCIATION TO STATE CHARTER

(Statutory authority: Banking Law, § 410)

- 112.1 General information
- 112.2 Documents required
- 112.3 Additional documents

Section 112.1 General information.

(a) The instructions set forth in this Supervisory Procedure shall apply to the conversion of a Federal savings and loan association having its place of business in this State into a State savings and loan association pursuant to Banking Law, § 410.

(b) Six copies of a letter of application and each document referred to in section 112.2 of this Supervisory Procedure, including two executed copies of the documents referred to in section 112.2(a), (b) and (c) of this Supervisory Procedure, shall be filed with the Superintendent, 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 of Financial Services 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 of Financial Services ("Superintendent").

(c) Before submission of the application, the plan of conversion shall be approved at a meeting held upon not less than 10 days' written notice to each shareholder by the vote, in person or by proxy, of the holders of at least 66-2/3 percent in amount of the book value of all outstanding shares of the association, or at least 75 percent in amount of the book value of the outstanding shares of the association represented at the meeting. Notice of the shareholders' meeting, together with any proxy material, shall be served personally upon or mailed to each shareholder of the association at his 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 association shall take the action prescribed or authorized by Federal law to effect such conversion.

(e) Approval by the Superintendent will be conditioned in all cases upon the continued insurance by the Federal Savings and Loan Insurance Corporation of all deposit accounts to the extent permitted by Federal law.

(f) Following submission of the application, the Superintendent will ordinarily require a full examination of the Federal savings and loan association by State bank examiners before he acts on the application.

(g) The Superintendent reserves the right to require additional information in connection with the application. The applicants may, of course, submit any information in addition to that required by this

Supervisory Procedure which they deem pertinent to the application.

112.2 Documents required.

The following documents shall be filed as part of the application:

(a) Plan of conversion, signed by the president of the association 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.

(b) Organization certificate, as required by Banking Law, section 375, executed by a majority of the directors of the association.

(c) Minutes of the meeting of shareholders of the association at which the plan of conversion was approved, including the notice to shareholders, proxy material and plan of conversion in the form submitted to shareholders, certified by the presiding officer and by the secretary of the meeting and otherwise in accordance with Banking Law, section 410. The presiding officer and the secretary of the meeting shall certify that (1) the notice of the meeting and proxy material were served personally or mailed to each shareholder at his last known address at least 10 days prior to the shareholders' meeting and (2) the plan of conversion in the form attached was the plan submitted to the shareholders at such meeting, and was approved by the vote, in person or by proxy, of the holders of at least 66-2/3 percent in amount of book value of all outstanding shares of the association, or at least 75 percent in amount of the book value of the outstanding shares of the association represented at the meeting. Such certificate shall also indicate the actual vote of the shareholders for and against the plan of conversion.

(d) Proposed by-laws of the State association as required by Banking Law, § 376.

112.3 Additional documents.

The following additional documents shall be submitted to the superintendent as they become available to the association:

(a) Copies of all notices, consents and authorizations required by Federal law and regulations in connection with the conversion.

(b) Opinion of counsel for the association as to compliance with all requirements of Federal and State law in connection with the conversion.