

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 816*
Second Edition Engrossed 5/23/12

Short Title: Banking Law Modernization Act. (Public)

Sponsors: Senators Brown; Bingham, Blake, Brunstetter, Daniel, Davis, Harrington, Hunt,
Newton, Preston, Stevens, and Tillman.

Referred to: Commerce.

May 21, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE BANKING LAWS OF NORTH CAROLINA, AS
3 RECOMMENDED BY THE JOINT LEGISLATIVE STUDY COMMISSION ON THE
4 MODERNIZATION OF NORTH CAROLINA BANKING LAWS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Articles 1 through 10, 12, and 13 of Chapter 53 of the General
7 Statutes are repealed.

8 **SECTION 2.** The title of Chapter 53 of the General Statutes reads as rewritten:

9 "**Chapter 53.**

10 "**Banks-Regulation of Financial Services.**"

11 **SECTION 3.** Chapter 53 of the General Statutes is amended by adding the
12 following new Article to read:

13 "Article 1A.

14 "General Provisions.

15 "**§ 53-1.1. Banking definitions applicable to this Chapter.**

16 Except as otherwise provided by law, the definitions contained in G.S. 53C-1-4 shall apply
17 to terms used in this Chapter."

18 **SECTION 4.** The General Statutes are amended by adding a new Chapter to read:

19 "**Chapter 53C.**

20 "**Regulation of Banks.**

21 "Article 1.

22 "General Provisions.

23 "**§ 53C-1-1. Title.**

24 This Chapter shall be known and may be cited as Regulation of Banks and Other Financial
25 Services.

26 "**§ 53C-1-2. Scope and applicability of Chapter.**

27 (a) Unless the context specifies otherwise, this Chapter shall apply to the following:

28 (1) All existing banks organized or created under the laws of this State.

29 (2) All banks created under the provisions of Article 3 of this Chapter.

30 (3) All persons who subject themselves to the provisions of this Chapter.

31 (4) All persons who become subject to the penalties provided for in this Chapter
32 as a consequence of violating any of the provisions of this Chapter.

33 (b) Transactions validly entered into before the effective date of this act and the rights,
34 duties, and interests flowing from them remain valid and may be terminated, completed, or



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1 enforced as required or permitted by any statute amended or repealed by the law by which this
2 act was enacted as though the amendment or repeal had not occurred.

3 (c) Except as restricted by federal law, a federally chartered depository institution that
4 has a branch in this State shall have all the rights, powers, and privileges and shall be entitled to
5 the same exemptions and immunities as banks organized or created under the laws of this State.

6 (d) Except as restricted by federal law or the laws of another state in which it was
7 organized or created, an out-of-state bank that has a branch in this State shall have, with respect
8 to activities conducted through such branch, all the rights, powers, and privileges and shall be
9 entitled to the same exemptions and immunities as banks organized and created under the laws
10 of this State.

11 (e) Any reference in this Chapter to a state or federal law, regulation, or agency shall be
12 deemed to refer to any replacement law or regulation or any successor agency, whether or not
13 this Chapter explicitly provides for that reference.

14 **"§ 53C-1-3. Existing banks; prohibitions, injunctions.**

15 (a) No depository institution organized or created under the laws of this State may
16 operate as a bank except in accordance with this Chapter. Banks established prior to the
17 effective date of this act may continue operation under their existing organizational documents
18 but shall be subject to all other requirements of this Chapter.

19 (b) No person shall operate in this State as a "bank," "savings bank," "savings and loan
20 association," "trust company," or otherwise as a depository institution or trust institution unless
21 established as a depository institution or trust institution under the laws of this State or another
22 state or established under federal law. Unless so authorized, no person doing business in this
23 State shall do either of the following:

24 (1) Use in its name the term "bank," "savings and loan," "savings bank,"
25 "banking company," "trust company," or words of similar meaning that lead
26 the public reasonably to believe that it conducts the business of a depository
27 institution or trust institution.

28 (2) Use any sign, letterhead, circular, or Web site content or advertise or
29 communicate in any manner that would lead the public reasonably to believe
30 that it conducts the business of a depository institution or trust institution.

31 (c) Upon application by the Commissioner, a court of competent jurisdiction may issue
32 an injunction to restrain any person from violating or from continuing to violate this section.

33 **"§ 53C-1-4. Definitions and application of terms.**

34 Unless the context requires otherwise, the following definitions apply in this Chapter:

35 (1) Acquire. – To obtain the right or power to vote or to direct the voting of
36 voting securities of a bank or holding company as follows:

37 a. Through a purchase of or share exchange for shares.

38 b. By reason of an issuance of shares or the exercise of a right under a
39 warrant, option, or convertible security or instrument to acquire
40 shares.

41 c. Pursuant to an agreement or trust or through any similar transaction,
42 event, or contractual right.

43 (2) Acting in concert. – Knowing participation in a joint activity or
44 interdependent conscious parallel action toward the common goal of
45 obtaining control of a bank or holding company, whether or not pursuant to
46 an express agreement, including participation in a combination or pooling of
47 voting securities of a bank holding company for such common purpose
48 pursuant to any contract, understanding, relationship, agreement, or other
49 arrangement, whether written or otherwise.

- 1 (3) Affiliate. – A person that, directly or indirectly, controls, is controlled by, or
2 is under common control with another person. Each member of a group of
3 persons acting in concert shall be deemed an affiliate of the group.
- 4 (4) Bank. – Any corporation, other than a credit union, savings institution, or
5 trust institution, that is organized under the laws of this State and is engaged
6 in the business of receiving deposits (other than trust funds), paying monies,
7 and making loans.
- 8 (5) Banking laws. – All laws which the Commissioner or the OCOB is
9 authorized to enforce under any applicable statute.
- 10 (6) Bank operating subsidiary. – A subsidiary that is under the control of a bank
11 and engages only in activities in which a bank may engage pursuant to
12 G.S. 53C-5-1.
- 13 (7) Bank premises. – Any improved or unimproved real estate, whether or not
14 open to the public, that is utilized or intended to be utilized by a bank,
15 including additional space to rent as a source of income.
- 16 (8) Bank supervisory agency. – Any of the following agencies:
17 a. The CFPB, FDIC, Federal Reserve Board, OCC, and any successor
18 to these agencies.
19 b. Any agency of another state with primary responsibility for
20 chartering and supervising depository institutions organized under
21 the laws of that state.
22 c. Any agency of a sovereign nation with primary responsibility for
23 chartering and supervising depository institutions organized under
24 the laws of that nation.
- 25 (9) Bankers' bank. – As defined in Regulation D of the Federal Reserve Board,
26 12 C.F.R. § 204.121.
- 27 (10) Board of directors. – A governing board of a company that is responsible for
28 policy, oversight, and compliance.
- 29 (11) Branch. – An office of any bank or a depository institution organized under
30 the banking laws of the United States, another state, or another sovereign
31 nation, other than that depository institution's principal office, in which
32 deposits are received. A branch may also engage in any of the functions or
33 services authorized to be engaged in by the bank of which it is a branch. The
34 term "branch" does not include a non-branch bank business office,
35 automated teller machine, remote deposit facility, remote service unit,
36 customer-bank communications terminal, point-of-sale terminal, automated
37 banking facility or other direct or remote information processing device or
38 machine, whether manned or unmanned, by means of which information
39 relating to any financial service or transaction rendered to the public is
40 stored and transmitted, instantaneously or otherwise, to or from a bank or
41 other nonbank terminal.
- 42 (12) Capital. – An amount equal to the bank's "total capital" as that term is used
43 by the FDIC in 12 C.F.R. Part 325; provided, that if the term "total capital"
44 is replaced by a term including substantially the same elements as "total
45 capital," the term "capital" as used in this Chapter shall mean an amount
46 equal to the amount calculated by application of the definition of such
47 replacement term.
- 48 (13) Capital impairment. – The reduction of a bank's capital at any time below its
49 required capital.
- 50 (14) Central reserve bank. – A depository institution of which at least fifty
51 percent (50%) of its shares are owned by other depository institutions.

- 1 (15) CFPB. – The Consumer Financial Protection Bureau or its successor.
2 (16) Charter. – A document issued by the Commissioner in accordance with
3 Article 3 of this Chapter permitting a bank to conduct banking business.
4 (17) Combination. – A merger, share exchange, or transfer or acquisition of all or
5 substantially all assets and liabilities of a person undertaken in compliance
6 with such federal laws and laws of this State or other states as may be
7 applicable.
8 (18) Commission. – The State Banking Commission provided for in
9 G.S. 53C-2-1.
10 (19) Commissioner. – The Commissioner of Banks provided for in G.S. 53C-2-2.
11 (20) Company. – A corporation, limited liability company, partnership, joint
12 venture, business trust, trust, syndicate, association, unincorporated
13 organization, or other form of business entity.
14 (21) Control. – The possession, directly or indirectly, of the power or right to
15 direct or to cause the direction of the management or policies of a person by
16 reason of an agreement, understanding, proxy, or power of attorney or
17 through the ownership of or voting power over ten percent (10%) or more of
18 the voting securities of the person.
19 (22) Control transaction. – The acquisition of control over a bank or a holding
20 company other than pursuant to a combination.
21 (23) Credit union. – A credit union as defined in G.S. 54-109.1.
22 (24) De novo branch. – A branch of a bank or of an out-of-state bank within this
23 State that is established as a branch, and not (i) by virtue of an acquisition of
24 the existing branch of another bank or out-of-state bank, (ii) by a
25 combination involving the bank or out-of-state bank, or (iii) by the
26 conversion of a non-branch bank business office to a branch.
27 (25) Deposit. – A "deposit" as defined in Section 3(1) of the Federal Deposit
28 Insurance Act, 12 U.S.C. § 1813(1).
29 (26) Deposit insurance. – Insurance of a bank's deposit accounts where the
30 beneficiaries are the holders of the insured accounts.
31 (27) Depository institution. – A bank, out-of-state bank, savings institution, or
32 federally chartered institution, the deposits of which are insured by the
33 FDIC.
34 (28) Deputy commissioner. – An individual appointed by the Commissioner to
35 such office as provided by G.S. 53C-2-3.
36 (29) Distribution. – With respect to a bank, "distribution" has the same meaning
37 as set forth in Chapter 55.
38 (30) Debt previously contracted (DPC) subsidiary. – A subsidiary of a bank that
39 acquires in good faith an equity ownership interest through foreclosure or
40 other realization on collateral, by way of a compromise of a disputed or
41 contested claim, or to avoid a loss in connection with a debt previously
42 contracted or to which the bank transfers an equity ownership interest so
43 acquired by the bank.
44 (31) Examination. – A supervisory inspection of a bank, a proposed bank, a
45 holding company, or a branch of an out-of-state bank operating in this State
46 that may include inspection of all relevant information, including
47 information of or about the subsidiaries and affiliates of the bank, proposed
48 bank holding company, or branch. "Examination" also includes an
49 investigation of any person with respect to any violation or suspected
50 violation of any provision of this Chapter by such person, or a review of

- 1 facts and circumstances relevant to the Commissioner's consideration of the
2 issuance of an order pursuant to this Chapter.
- 3 (32) Equity ownership interest. – Any beneficial equity or similar interest,
4 whether direct or indirect, including shares, limited or general partnership
5 interests, and membership interests in a limited liability company.
- 6 (33) Farm credit system institution. – A lending institution regulated by the Farm
7 Credit Administration.
- 8 (34) FDIC. – The Federal Deposit Insurance Corporation or its successor.
- 9 (35) Federal Reserve Board. – The Board of Governors of the Federal Reserve
10 System or its successor.
- 11 (36) Federal savings association. – A federal savings association or federal
12 savings bank chartered under Section 5 of the Home Owners' Loan Act, 12
13 U.S.C. § 1464.
- 14 (37) Federally chartered institution. – A national bank or federal savings
15 association.
- 16 (38) Financial subsidiary. – A "financial subsidiary" as defined in 12 U.S.C. §
17 24a(g).
- 18 (39) Holding company. – A company that controls a depository institution or that
19 controls a company that directly or indirectly controls a depository
20 institution.
- 21 (40) Immediate family. – An individual's spouse, father, mother, children,
22 brothers, sisters, and grandchildren; the father, mother, brothers and sisters
23 of the individual's spouse; and the spouse of the individual's child, brother,
24 or sister.
- 25 (41) Inadequate capital. – An amount of capital equal to at least seventy-five
26 percent (75%) but less than one hundred percent (100%) of required capital.
- 27 (42) Individual. – A human being.
- 28 (43) Insufficient capital. – An amount of capital less than seventy-five percent
29 (75%) of required capital.
- 30 (44) Lower-tier subsidiary. – Any bank operating subsidiary in which a bank
31 subsidiary has an equity ownership interest.
- 32 (45) National bank. – A banking association organized under 12 U.S.C. § 21.
- 33 (46) Non-branch bank business office. – Any staffed physical location open to the
34 public in this State in which an office of a bank, out-of-state bank,
35 depository institution established under the laws of another state, or federally
36 chartered institution that is not a branch, an office of a separately organized
37 subsidiary of such depository institution, or an office of the holding
38 company of such depository institution, at which one or more banking or
39 banking-related products or services are offered, other than the taking of
40 deposits. The provision of remote deposit capture facilities or services by a
41 non-branch bank business office shall not be deemed to be a taking of
42 deposits. Non-branch bank business offices include loan production offices,
43 mortgage loan offices, and insurance agency offices, or a combination
44 thereof.
- 45 (47) North Carolina financial institution. – A bank, savings institution, or trust
46 company organized under the laws of this State. For purposes of the
47 Securities Act of 1933 and the Securities Exchange Act of 1934, any North
48 Carolina financial institution is a banking institution.
- 49 (48) OCOB. – The Office of the Commissioner of Banks as provided in
50 G.S. 53C-2-3.
- 51 (49) OCC. – The Office of the Comptroller of the Currency or its successor.

- 1 (50) Organizational documents. – The charter, certificate of organization, articles
2 of incorporation, articles of association, certificate of limited partnership,
3 bylaws, operating agreement, partnership agreement, and any other similar
4 documents required to be prepared or adopted by a company in connection
5 with its organization, and as thereafter amended from time to time.
- 6 (51) Organizational law. – The laws of the jurisdiction of organization of a
7 company applicable to the organization of the company and its governance,
8 including approval of transactions by its board of directors, shareholders,
9 partners, members, or beneficiaries, as applicable.
- 10 (52) Organizers. – One or more individuals who are the organizers of a proposed
11 bank responsible for the business of the proposed bank from the filing of the
12 application to the Commission's final decision on the application.
- 13 (53) Out-of-state bank. – A bank that is organized, chartered, or created under the
14 laws of a state other than this State and the deposits of which are insured by
15 the FDIC.
- 16 (54) Person. – An individual, a company, or a group of persons who are acting in
17 concert.
- 18 (55) Plan of conversion. – A detailed outline of the procedure of the conversion
19 of a depository institution from one to another charter.
- 20 (56) Practical banker. – An individual who at the time of appointment to the
21 Commission is, or has been during the five years preceding the appointment,
22 a president, chief executive officer, director, or holder of five percent (5%)
23 or more of any class of voting securities of a North Carolina financial
24 institution.
- 25 (57) Principal office. – The office that houses the headquarters of a bank.
- 26 (58) Public member. – A member of the Commission who is not a practical
27 banker and who is not at the time of appointment to the Commission, nor
28 was within the five years preceding the appointment, an employee of a North
29 Carolina financial institution.
- 30 (59) Public notice. – Notice to the public of the applicable information specified
31 in this Chapter by (i) a single publication in a newspaper of general
32 circulation in the county in which the bank that is the subject of the
33 publication has its principal office or in such other county as may be directed
34 by the Commissioner to best meet the purposes for which the notice is
35 required and (ii) a posting in the notices section of the Commissioner's Web
36 site for at least 15 days.
- 37 (60) Record. – Information, reports, memoranda, charts, letters, messages,
38 extracts, summaries, analyses, compilations, transaction documentation,
39 account statements, financial statements, and other documents, including
40 customer financial and other information, whether created, transmitted,
41 distributed, retained, or stored in tangible or digital form.
- 42 (61) Registered agent. – The person named in the organizational documents of a
43 company upon whom service of legal process is deemed binding upon the
44 company.
- 45 (62) Required capital. – Required capital means either of the following:
46 a. In the case of a proposed bank, the amount of capital required by the
47 Commissioner as a prerequisite to the commencement of the business
48 of banking.
49 b. In all other cases, an amount of capital equal to at least the amount of
50 capital required for a bank to be deemed "adequately capitalized"
51 under applicable federal regulatory capital standards.

- 1 (63) Savings institution. – A savings and loan association or a savings bank
2 organized under the laws of this State or of another state, or a federal savings
3 association or savings bank.
- 4 (64) Shareholder. – Any person in whose name shares are registered in the
5 records of a corporation, or the beneficial owner of shares to the extent of
6 the rights granted by a nominee certificate on file with a corporation.
- 7 (65) Shares. – The units into which the equity ownership interests of a
8 corporation are divided.
- 9 (66) State. – Any state of the United States, the District of Columbia, or any
10 territory of the United States other than this State.
- 11 (67) State trust company. – A company organized under the provisions of Article
12 24 of Chapter 53 of the General Statutes and a trust company previously
13 organized under other provisions of this Chapter to operate only as a trust
14 company and not as a commercial bank.
- 15 (68) Subsidiary. – A company over which a bank has control.
- 16 (69) This State. – The State of North Carolina.
- 17 (70) Trust business. – Acting as a fiduciary or in other capacities permissible for
18 a trust institution under G.S. 53-331.
- 19 (71) Trust company. – A trust institution that is neither a depository institution
20 nor a foreign bank, as defined in 12 U.S.C. § 1813(s)(1), but not including a
21 bank organized under the laws of a territory of the United States.
- 22 (72) Trust funds. – Trust funds as defined in Section 3(p) of the Federal Deposit
23 Insurance Act, 12 U.S.C. § 1813(p).
- 24 (73) Trust institution. – Any company lawfully acting as a fiduciary in a state or
25 in a foreign country.
- 26 (74) Voting securities. – A security that (i) confers upon the holder the right to
27 vote for the election of members of the board of directors or similar
28 governing body of the company or (ii) is convertible into, or entitles the
29 holder to receive upon its exercise, a security that confers such a right to
30 vote.
- 31 (75) Well-capitalized. – The term "well-capitalized" has the same meaning as
32 defined in Regulation Y of the Federal Reserve Board, 12 C.F.R. § 225.2(r).
- 33 (76) Well-managed. – Except as otherwise provided in this Chapter, a company
34 or depository institution is well-managed if the following apply:
- 35 a. At its most recent examination, the company or institution received
36 at least a satisfactory composite rating and at least a satisfactory
37 rating for management, if such rating is given.
- 38 b. In the case of a company or depository institution that has not
39 received an inspection or examination rating, a company or
40 depository institution is well-managed if the Commissioner has
41 determined, after a review of the managerial and other resources of
42 the company or depository institution and after consulting with any
43 other appropriate bank supervisory agency for the company or
44 institution, that the company or institution is well-managed.
- 45 A depository institution that results from the merger of two or more
46 depository institutions that are well-managed shall be considered to be
47 well-managed unless the Commissioner determines otherwise after
48 consulting with any other appropriate bank supervisory agency for each
49 depository institution involved in the merger. A depository institution that
50 results from the merger of a depository institution that is well-managed with
51 one or more depository institutions that are not well-managed or have not

1 been examined shall be considered to be well-managed if the Commissioner
2 determines, after a review of the managerial and other resources of the
3 resulting depository institution and after consulting with any other
4 appropriate bank supervisory agency for the institutions involved in the
5 merger, as applicable, that the resulting institution is well-managed.

6 **"§ 53C-1-5. Severability.**

7 If any provision of this Chapter is found by any court of competent jurisdiction to be invalid
8 as to any person or circumstance, or to be preempted by federal law, the remaining provisions
9 of this Chapter shall not be affected and shall continue to apply to any other person or
10 circumstance."

11 "Article 2.

12 "Commission and Commissioner.

13 **"§ 53C-2-1. The Commission.**

14 (a) The Commission consists of 15 members, including the State Treasurer, who shall
15 serve as an ex officio member; 12 members appointed by the Governor; and two members
16 appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon
17 the recommendation of the President Pro Tempore of the Senate and one of whom shall be
18 appointed upon the recommendation of the Speaker of the House of Representatives. The
19 Governor shall appoint three practical bankers, one consumer finance licensee, and eight public
20 members to the Commission. The member appointed upon the recommendation of the
21 President Pro Tempore of the Senate shall be a practical banker, and the member appointed
22 upon the recommendation of the Speaker of the House shall be a practical banker. Members
23 shall serve terms of four years. No individual shall serve more than two complete consecutive
24 terms on the Commission. Any vacancy occurring in the membership of the Commission shall
25 be filled by the appropriate appointing officer for the unexpired term, except that vacancies
26 among members appointed by the General Assembly shall be filled in accordance with
27 G.S. 120-122. The appointed members of the Commission shall receive subsistence and travel
28 expenses at the rates set forth in G.S. 120-3.1. This compensation shall be paid from the
29 revenues of the OCOB.

30 (b) The Commission shall meet at such times, but not less than once every three
31 months, as the Commission may by resolution prescribe, and the Commission shall be
32 convened in special session at the call of the Governor or the Commissioner. The State
33 Treasurer shall be chair of the Commission. The Commission shall meet in person, provided
34 that it may, so long as consistent with applicable law regarding public meetings, meet by
35 telephone or video conference, including attendance of one or more members by telephone or
36 video conferencing.

37 (c) Except as required by State or federal law, no member of the Commission shall
38 divulge or make use of any information designated by this Chapter or by the Commissioner as
39 confidential, and no member shall give out any such information unless the information shall
40 be required of the member at a hearing at which the member is duly subpoenaed or by a court
41 of competent jurisdiction.

42 (d) A quorum of the Commission shall consist of a majority of its total membership.
43 Subject to the standards of Chapter 138A of the General Statutes, a majority vote of the
44 members qualified with respect to a matter who are present at the meeting where such matter is
45 considered shall constitute valid action of the Commission. In accordance with G.S. 138A-38,
46 the State Treasurer and all disqualified members who are present at a meeting shall be counted
47 for purposes of determining whether a quorum is present.

48 (e) The Commission is authorized to supervise, direct, and review the exercise by the
49 Commissioner of all powers, duties, and functions vested in or exercised by the Commissioner
50 under the banking laws of this State.

51 **"§ 53C-2-2. The Commissioner.**

1 (a) Effective April 1, 2011, and quadrennially thereafter, the Governor shall appoint a
2 Commissioner, which appointment shall be subject to confirmation by the General Assembly
3 by joint resolution. The name of the individual appointed to be Commissioner shall be
4 submitted to the General Assembly on or before February 1 of the year in which the
5 individual's term of office begins. The term of office for the Commissioner shall be four years.
6 In case of a vacancy in the office of Commissioner, the Governor shall appoint an individual to
7 serve as Commissioner on an interim basis pending confirmation of a nominee by the General
8 Assembly.

9 (b) The Commissioner has the powers enumerated in this Chapter and otherwise
10 provided by North Carolina law and such other powers as may be necessary for the proper
11 discharge of the Commissioner's duties, including the power to enter into contracts. The
12 Commissioner shall act as the executive officer of the Commission.

13 (c) The Commissioner is authorized to subpoena witnesses and compel their
14 attendance, require the production of evidence, administer oaths, and examine any person under
15 oath in connection with any subject related to any power vested or duty imposed on the
16 Commissioner under this Chapter.

17 (d) The Commissioner may sue and prosecute or defend in any action or proceeding in
18 any courts of this State or any other state and in any court of the United States for the
19 enforcement or protection of any right or pursuit of any remedy necessary or proper in
20 connection with the subjects committed to the Commissioner for administration or in
21 connection with any bank or the rights, liabilities, property, or assets thereof under the
22 Commissioner's supervision. Nothing herein shall be construed to render the Commissioner
23 liable to be sued except as other departments and agencies of the State may be liable under the
24 general law. The Commissioner may exercise any jurisdiction, supervise, regulate, examine, or
25 enforce any State consumer protection laws or federal laws with respect to which the
26 Commissioner has enforcement jurisdiction.

27 (e) The Commissioner shall have a seal of office bearing the legend "State of North
28 Carolina – Commissioner of Banks." The Commissioner may adopt other symbols or marks of
29 office.

30 **"§ 53C-2-3. The Office of the Commissioner of Banks.**

31 (a) The Commissioner shall be assisted in the performance of the duties of office by (i)
32 one or more deputy commissioners and (ii) examiners, investigators, counsel, and other
33 employees under the supervision of the Commissioner, all of whom, together with the
34 Commissioner, shall comprise the "Office of the Commissioner of Banks." In addition, the
35 work of the OCOB may be conducted by employees of other agencies of government and by
36 agents and independent contractors of the OCOB. The Commissioner may appoint or remove at
37 his or her discretion any deputy commissioner.

38 (b) The Commissioner shall appoint, with the approval of the Governor, and may
39 remove at the Commissioner's discretion, a chief deputy commissioner. The chief deputy
40 commissioner may perform such duties and exercise such powers of the Commissioner as the
41 Commissioner may direct. In the event of the absence, death, resignation, disability, or
42 disqualification of the Commissioner, or in case the office of Commissioner otherwise becomes
43 vacant, the chief deputy commissioner shall perform the duties and exercise all the powers
44 vested in the Commissioner until the Governor appoints an acting Commissioner.

45 (c) Except as otherwise provided in this Chapter, the OCOB and its employees are
46 exempt from the classification and compensation rules established by the State Personnel
47 Commission pursuant to G.S. 126-4(1) through (4); G.S. 126-4(5) only as it applies to hours
48 and days of work, vacation, and sick leave; G.S. 126-4(6) only as it applies to promotion and
49 transfer; G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive
50 pay programs; and Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1.
51 The salary of the Commissioner shall be fixed by the General Assembly.

1 (d) The Attorney General shall assign an attorney from the Department of Justice to
2 work full time with the Commission. The attorney shall be subject to all provisions of Chapter
3 126 of the General Statutes relating to the State Personnel System. The Commission shall fully
4 reimburse the Department of Justice for the compensation, secretarial support, equipment,
5 supplies, records, and other property to support the attorney.

6 **"§ 53C-2-4. Administration of the Office of the Commissioner of Banks.**

7 (a) As authorized in Chapters 54B, 54C, and this Chapter, the OCOB shall be funded
8 by annual or periodic assessments, licensing fees and charges, and reimbursements for
9 examination costs. This list is not exclusive. The OCOB may not levy assessments, fees, or
10 other charges except as expressly provided in this Chapter or by rule adopted in accordance
11 with the provisions of Chapter 150B of the General Statutes and the provisions of this section.
12 The Commissioner is authorized, in the exercise of reasonable discretion, to establish the time,
13 place, and method for the payment of assessments, fees, charges, and costs.

14 (b) Not less than 30 days prior to the commencement of each fiscal year, the OCOB
15 shall prepare and submit to the Commission a budget for the upcoming fiscal year, including
16 the estimated revenues and expenses for the year. The Commission shall review the budget in a
17 meeting prior to the commencement of the fiscal year with respect to which the budget has
18 been presented and shall approve or modify the budget at the meeting.

19 **"§ 53C-2-5. Rule making.**

20 (a) The Commissioner, subject to review and approval by the Commission, may make
21 all necessary rules with respect to the establishment, operation, conduct, and termination of any
22 and all activities and businesses that are subject to licensing, regulation, supervision, or
23 examination by the Commissioner under this Chapter.

24 (b) The rule-making authority conferred on the Commissioner by this section shall be in
25 addition to and not in derogation of any specific rule-making authority by any other provision
26 of this Chapter or otherwise provided by North Carolina law.

27 **"§ 53C-2-6. Hearings and appeals.**

28 (a) Any administrative hearing required or permitted to be held by the Commissioner
29 shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

30 (b) Upon an appeal to the Commission by any party from an order entered by the
31 Commissioner following an administrative hearing pursuant to Article 3A of Chapter 150B of
32 the General Statutes, the chair of the Commission may appoint an appellate review panel of not
33 fewer than three members to review the record on appeal, hear oral arguments, and make a
34 recommended decision to the Commission. Unless another time period for appeals is provided
35 by this Chapter, any party to an order by the Commissioner may, within 20 days after the order
36 and upon written notice to the Commissioner, appeal the Commissioner's order to the
37 Commission for review. The notice of appeal shall state the grounds for the appeal and set forth
38 in numbered order the assignments of error for review by the Commission. Failure to state the
39 grounds for the appeal and assignments of error shall constitute grounds to dismiss the appeal.
40 Failure to comply with the briefing schedule provided by the Commission shall also constitute
41 grounds to dismiss the appeal. Upon receipt of a notice of appeal, the Commissioner shall,
42 within 30 days of the notice, certify to the Commission the record on appeal. Any party to a
43 proceeding before the Commission may, within 20 days after final order of the Commission,
44 petition the Superior Court of Wake County for judicial review of a final determination of any
45 question of law that may be involved. The petition for judicial review shall be entitled "(insert
46 name) Petitioner v. State of North Carolina on Relation of the Commission." A copy of the
47 petition for judicial review shall be served upon the Commissioner pursuant to G.S. 150B-46.
48 The petition shall be placed on the civil issue docket of the court and shall have precedence
49 over other civil actions. Within 15 days of service of the petition for judicial review, the
50 Commissioner shall certify the record to the Clerk of Superior Court of Wake County. The

1 standard of review of a petition for judicial review of a final order of the Commission shall be
2 as provided in G.S. 150B-51(b).

3 (c) The hearing officer at administrative hearings conducted under the authority of the
4 Commissioner may be the Commissioner, a deputy commissioner, or other suitable person
5 designated by the Commissioner to serve as a hearing officer.

6 (d) The Commission may conduct public hearings on matters within its purview.

7 **"§ 53C-2-7. Official record.**

8 (a) The Commissioner shall keep a record in the OCOB of the Commissioner's official
9 acts, rulings, and transactions that, except as otherwise provided, shall be open to inspection
10 and copying by any person. The Commissioner may condition the provision of copies of
11 records upon the payment by the person requesting the documents of an amount sufficient to
12 cover the cost of retrieving, copying, and if requested, mailing the documents.

13 (b) Notwithstanding any laws to the contrary, the following records of the
14 Commissioner shall be confidential and shall not be disclosed or be subject to discovery or
15 public inspection:

16 (1) Records compiled during or in connection with an examination, audit, or
17 investigation of any person, including records relating to any application for
18 licensure or otherwise to the conduct of business.

19 (2) Records containing information compiled in preparation for or anticipation
20 of or in the course of litigation, examination, audit, or investigation.

21 (3) Records containing nonpublic personal information about a customer,
22 whether in paper, electronic, or other form, that is maintained by or on
23 behalf of the financial institution; provided, however, that every report made
24 by a North Carolina financial institution, with respect to a transaction
25 between it and an officer, director, or affiliate thereof, which report is
26 required to be filed with the Commissioner pursuant to this Chapter, shall be
27 filed with the Commissioner in a form prescribed by the Commissioner and
28 shall be open to inspection and copying by any person.

29 (4) Records containing information furnished in connection with an application
30 bearing on the character, competency, or experience, or information about
31 the personal finances of an existing or proposed organizer, officer, or
32 director of a depository institution, federally chartered institution, trust
33 institution, holding company, or any other person subject to the
34 Commissioner's jurisdiction.

35 (5) Records containing information about the character, competency,
36 experience, or finances of the directors, officers, or other persons having
37 control over a person giving notice or filing an application to engage in a
38 control transaction pursuant to this Chapter.

39 (6) Records containing information about the character, competency, or
40 experience of the directors, executive officers, or other persons having
41 control over any of the parties to a combination subject to the
42 Commissioner's jurisdiction.

43 (7) Records of North Carolina financial institutions in dissolution that have
44 liquidated, that are under the Commissioner's supervisory control, or that are
45 in receivership and that contain the names or other personal information of
46 any customers of the institutions.

47 (8) Records prepared by a compliance review committee or other committee of
48 the board of directors of a North Carolina financial institution or established
49 at the direction of such a board of directors that have been obtained by the
50 Commissioner.

1 may require additional information and may require the amendment of the application in the
2 course of the examination. An applicant's failure to furnish all required information or to pay
3 the required fee within 30 days after filing the application may be considered an abandonment
4 of the application.

5 **"§ 53C-3-2. Permission to organize a bank.**

6 (a) With the approval of the Commissioner, the organizers may file articles of
7 incorporation for the proposed bank with the Secretary of State. The Commissioner shall
8 authorize the organization of the proposed bank if the Commissioner is satisfied that each of
9 the following conditions is met:

10 (1) The application is complete.

11 (2) The Commissioner's examination as provided for in G.S. 53C-3-1 indicates
12 that the requirements for the issuance of a charter to the applicant are
13 reasonably probable of satisfaction.

14 (3) The proposed name of the proposed bank is not likely to mislead the public
15 as to its character or purpose and is not the same as a name already adopted
16 by an existing depository institution or trust institution operating in this
17 State.

18 (b) If the Commissioner approves the organization of the proposed bank, the
19 Commissioner shall issue a certificate to the Secretary of State. The Secretary of State shall
20 transmit to the Commissioner a certified copy of the filed articles of incorporation of the
21 proposed bank.

22 (c) Unless and until the Commissioner issues a charter to the proposed bank:

23 (1) The proposed bank shall not transact any business except such as is
24 incidental and necessary to its organization or the application for a charter or
25 preparation for commencing the business of banking.

26 (2) All funds paid for shares of the proposed bank shall be placed in escrow
27 under a written escrow with a third-party escrow agent satisfactory to the
28 Commissioner.

29 (3) All funds for shares placed into escrow, and all dividends or interest on such
30 funds, may be removed from escrow only with the Commissioner's approval
31 except to the extent that such funds are refunded to subscribers or as
32 otherwise required by law.

33 (d) A proposed bank is subject to the jurisdiction of the Commissioner.

34 **"§ 53C-3-3. Articles of incorporation of a proposed bank.**

35 (a) The articles of incorporation of a proposed bank shall be signed and acknowledged
36 by or on behalf of an organizer and shall contain the following:

37 (1) The information required to be set forth in articles of incorporation under
38 Chapter 55 of the General Statutes.

39 (2) Any provision consistent with Chapter 55 of the General Statutes and other
40 applicable law that the organizers elect to set forth for the regulation of the
41 internal affairs of the proposed bank and that the Commissioner authorizes
42 or requires.

43 (3) Any provision the Commissioner requires or authorizes as a substitute for a
44 provision that otherwise would be required by Chapter 55 of the General
45 Statutes.

46 (b) Before the chartering of a proposed bank, the articles of incorporation filed under
47 the provisions of G.S. 53C-3-2 shall be sufficient certification to the FDIC that the proposed
48 bank is a legal entity.

49 **"§ 53C-3-4. Commissioner's approval of charter issuance.**

50 (a) The Commissioner may approve a charter for a proposed bank only when the
51 Commissioner has determined that all the following requirements have been satisfied or are

1 reasonably probable to be satisfied within a reasonable period of time specified by the
2 Commissioner in the order of approval:

- 3 (1) The proposed bank has solicited or will solicit subscriptions for purchases of
4 shares sufficient to provide an amount of required capital satisfactory to the
5 Commissioner for the commencement of the business of banking.
6 (2) All prior public solicitations for purchases of shares and all future
7 solicitations will be solicited with appropriate disclosure, taking into account
8 all the circumstances of the public solicitation, including a prominent
9 statement in any solicitation document to the effect that the solicitation has
10 not been approved by the Commissioner or the Commission and that a
11 representation to the contrary is a criminal offense.
12 (3) All payments for purchases of shares in a bank in organization are made in
13 United States currency.
14 (4) The proposed bank has an operational expense fund from which to pay
15 organizational expenses, in an amount determined by the Commissioner to
16 be sufficient for the safe and sound operation of the proposed bank while the
17 charter application is pending.
18 (5) The proposed bank has been formed for legitimate and lawful business
19 purposes.
20 (6) The character, competence, and experience of the organizers, proposed
21 directors, proposed officers, and initial holders of more than ten percent
22 (10%) of the voting securities of the proposed bank will command the
23 confidence of the public.
24 (7) The proposed officers and directors, as a group, have degrees of character,
25 competence, and experience sufficient to justify a belief that the proposed
26 bank will be free from improper or unlawful influence and otherwise will
27 operate safely, soundly, and in compliance with law.
28 (8) The anticipated volume and nature of business of the proposed bank
29 projected in the application are reasonable and indicate a reasonable
30 probability of safe, sound, and profitable operation of the proposed bank.
31 (9) If the proposed bank intends to conduct "trust business," as defined by
32 G.S. 53C-1-4(70), it appears that trust powers should be granted based on
33 consideration of the various factors set forth in Article 24 of Chapter 53 of
34 the General Statutes for considering applications and setting capital for a
35 State trust company.

36 (b) The Commissioner's determination that the requirements described in subsection (a)
37 are reasonably probable of satisfaction may be based on partial satisfaction of the requirements
38 at a level set by the Commissioner as a prerequisite for approval of the charter, and also may be
39 based on presentation of a plan for the full satisfaction of the requirements.

40 (c) If it appears to the Commissioner that the proposed bank has satisfied or is
41 reasonably probable to satisfy the requirements for issuance of a charter, the Commissioner
42 shall issue an order approving the application for a charter and such order shall be submitted to
43 the Commission for its review at a public hearing. The Commissioner may, in the order
44 approving the proposed bank's charter, impose other reasonable conditions or restrictions upon
45 the proposed bank or the new bank, consistent with this Chapter.

46 (d) If it appears to the Commissioner that the proposed bank has not satisfied and is not
47 reasonably probable of satisfying the requirements for issuance of a charter, the Commissioner
48 shall issue an order denying approval of the application. The applicant may, within 10 days of
49 issuance of the order, give notice of appeal of this decision to the Commission pursuant to
50 G.S. 53C-2-6.

51 **§ 53C-3-5. Notice; public hearing.**

1 (a) Not less than 30 days before the public hearing of the Commission to review the
2 Commissioner's approval of an application, the applicant shall cause to be published a public
3 notice containing the following:

4 (1) A statement that the application has been filed with the Commissioner.

5 (2) The name of the community where the proposed bank intends to locate its
6 principal office.

7 (3) A statement that a public hearing will be held to review the Commissioner's
8 approval of the application.

9 (4) A statement that any interested person may file a written statement either
10 favoring or protesting the chartering of the proposed bank. The statement
11 shall note that, in order to be considered at the public hearing, all written
12 statements from interested persons must be filed with the Commission
13 within 30 days of the date of publication of the public notice.

14 (b) At the public hearing, the Commission shall consider the findings and order of the
15 Commissioner and shall hear such testimony as the Commissioner may wish to give or be
16 called upon to give. To the extent that the Commission deems the information and testimony
17 relevant to its review of the Commissioner's order, the Commission shall receive information
18 and hear testimony from the organizers and shall hear from any other interested persons.

19 **"§ 53C-3-6. Commission decision.**

20 (a) The Commission shall consider the findings and order of the Commissioner, oral
21 testimony, and any other information and evidence, either written or oral, that comes before it
22 at the public hearing to review the Commissioner's approval of an application for a charter. The
23 Commission may adjourn and reconvene the public hearing in unusual circumstances. The
24 Commission shall affirm or reverse the Commissioner's order. The Commission may adopt the
25 Commissioner's recommendation with respect to conditions for issuance of a charter, or it may
26 modify the conditions recommended by the Commissioner. The Commission shall render its
27 decision at the public hearing, unless unusual circumstances require postponement of the
28 decision. The Commission's review shall be limited to a determination of whether the criteria
29 set forth in G.S. 53C-3-4 have been met and whether the provisions of this Article have been
30 followed.

31 (b) If the Commission denies an application for a charter or if the Commission approves
32 an application with conditions not set forth in the Commissioner's approval, the applicant may
33 appeal the denial or approval containing such conditions, as provided in G.S. 53C-2-6.

34 **"§ 53C-3-7. Issuance of charter.**

35 (a) A proposed bank shall not engage in business except as allowed under
36 G.S. 53C-3-2(c)(1), until it receives a charter issued by the Commissioner. The Commissioner
37 shall not issue the charter until the Commissioner is satisfied that the proposed bank has done
38 each of the following:

39 (1) Received payment in United States currency for the purchase of shares and
40 will have satisfactory required capital upon commencing business, in each
41 case in at least the amount required by the Commission's order approving the
42 application.

43 (2) Elected the proposed officers and directors named in the application or other
44 officers and directors approved by the Commissioner.

45 (3) Secured deposit insurance from the FDIC.

46 (4) Complied with all requirements of the Commission's order approving the
47 application for a charter.

48 (5) Appears to be ready to commence the business of banking in the reasonable
49 discretion of the Commissioner upon a pre-opening examination.

50 (b) The charter issued by the Commissioner shall set forth any trust powers of the bank
51 that may be full or partial trust powers.

1 (c) If a bank does not open and engage in the business of banking within six months
2 after the date its charter is issued or within such longer period as may be permitted by the
3 Commissioner, the Commissioner shall revoke the charter.

4 (d) If the Commissioner determines that a charter should not be issued following
5 Commission approval, the applicant may appeal that decision to the Commission as provided in
6 G.S. 53C-2-6.

7 (e) Following the exhaustion of all appeals, the Commissioner may dissolve and
8 liquidate the proposed bank as provided in G.S. 53C-9-301, or order the organizers to dissolve
9 and liquidate the proposed bank pursuant to G.S. 53C-9-201, if any one of the following
10 occurs:

11 (1) The Commissioner does not recommend the issuance of a charter.

12 (2) The Commission denies approval of a charter.

13 (3) The charter is revoked by the Commissioner pursuant to subsection (c) of
14 this section or other applicable law.

15 "Article 4.

16 "Governance of Banks.

17 **"§ 53C-4-1. Banks – form of organization.**

18 (a) A bank shall be formed as, and shall maintain the form of, a corporation formed
19 under the laws of this State.

20 (b) The provisions contained in Chapter 55 of the General Statutes shall apply to banks,
21 except where provisions of this Chapter provide differently or where the Commissioner
22 determines that any provision of Chapter 55 is inconsistent with the business of banking or the
23 safety and soundness of banks.

24 **"§ 53C-4-2. Banks controlled by boards of directors.**

25 (a) The corporate powers of a bank shall be exercised by or under the authority of, and
26 the business and affairs of the bank shall be managed by or under the direction of, its board of
27 directors.

28 (b) A bank's board of directors shall consist of not fewer than five individuals. For good
29 cause shown, the Commissioner may approve boards of directors consisting of fewer than five
30 individuals to the extent consistent with other applicable law.

31 (c) The board of directors shall meet at least quarterly, provided that the executive
32 committee shall meet in any month in which there is no meeting of the board of directors, and
33 the loan committee shall meet monthly.

34 (d) Except to the extent the provisions of this Chapter or other applicable federal or
35 state laws and regulations impose a different standard, bank directors shall have the duties,
36 authority, and liabilities of directors of corporations organized under Chapter 55 of the General
37 Statutes.

38 (e) The board of directors of a bank may appoint directors with respect to such of the
39 bank's branches as it deems useful to the business of the bank. No such advisory director shall
40 be liable for acts or omissions undertaken as an advisory director under the laws applicable to
41 the performance of the duties of a director of a bank, unless and only to the extent he or she
42 undertakes or is delegated authority as a director of the bank.

43 **"§ 53C-4-3. Committees of boards of directors.**

44 (a) The board of directors shall appoint, at a minimum, an audit committee, an
45 executive committee, and a loan committee (which may be the executive committee or the
46 board of directors as a whole) and may appoint such other committees as it deems appropriate
47 to provide for the safe and sound operation of the bank in a manner consistent with applicable
48 laws and regulations.

49 (b) The Commissioner may require the board of directors of a bank to establish one or
50 more additional committees if, in the judgment of the Commissioner, such committees are
51 reasonably necessary or appropriate for good corporate governance, for the safe and sound

1 operation of the bank, or to ensure the bank's compliance with applicable laws and regulations.
2 In the exercise of his or her judgment under this subsection, the Commissioner may consider,
3 among other factors, the asset size of the bank, the range and complexity of the activities in
4 which the bank is engaged, the various risks undertaken by the bank, the experience and
5 abilities of the bank's directors and officers, and the adequacy of the bank's existing policies,
6 procedures, and internal controls.

7 **"§ 53C-4-4. Minutes of meetings of directors and committees.**

8 Minutes shall be recorded and retained for all meetings of the board of directors and board
9 committees and kept on file at the bank. The minutes shall show a record of actions taken.

10 **"§ 53C-4-5. Qualifications of bank directors.**

11 (a) At least three-fourths of the directors of a bank shall be citizens of the United States
12 of America.

13 (b) A director must satisfy eligibility requirements for bank directors imposed by
14 federal law, including Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. § 1829(a).

15 (c) A director must do either of the following:

16 (1) Appoint an agent in Wake County, North Carolina, for service of process.

17 (2) Consent, on a form satisfactory to the Commissioner, to the following:

18 a. The Commissioner may serve as the director's agent for service of
19 process.

20 b. The director consents to jurisdiction in Wake County, North
21 Carolina, but only for purposes of any action or proceeding brought
22 by the Commissioner.

23 **"§ 53C-4-6. Liability of directors.**

24 (a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30.

25 (b) Any director of any bank who shall knowingly violate, or who shall knowingly
26 permit to be violated by any officers, agents, or employees of the bank, any of the provisions of
27 this Chapter shall be held personally and individually liable for all damages which the bank, its
28 shareholders, or any other person shall have sustained in consequence of such violation. Any
29 aggrieved shareholder of any bank in liquidation may prosecute an action for the enforcement
30 of the provisions of this section. Only one such action may be brought.

31 **"§ 53C-4-7. Directors may declare distributions.**

32 Provided a bank does not make distributions that reduce its capital below its applicable
33 required capital, the board of directors of a bank may declare such distributions as it deems
34 proper.

35 **"§ 53C-4-8. Officers and employees shall give bond.**

36 (a) A bank shall require security in the form of a bond for the fidelity and faithful
37 performance of duties by its officers and employees. The bond shall be issued by a bonding
38 company authorized to do business in this State and upon such form as may be approved by the
39 Commissioner. Otherwise, the amount, form, and terms of the bond shall be such as the board
40 of directors may require. The premium for the bond is to be paid by the bank.

41 (b) To provide for the safety and soundness of a bank, the Commissioner may require
42 an increase in the amount of the bond or additional or different security.

43 **"§ 53C-4-9. Affiliate transactions.**

44 A bank may extend credit to, and engage in transactions with, its affiliates, directors,
45 executive officers, principal shareholders, and their respective immediate family members only
46 to the extent permitted by, and subject to such restrictions and conditions as are imposed by,
47 applicable State and federal laws and regulations.

48 **"§ 53C-4-10. Examination of board composition, structure, and conduct.**

49 (a) As part of its examinations of a bank, the OCOB may assess the competence,
50 composition, structure, and conduct of such bank's board of directors, including the following:

51 (1) The number of directors.

- 1 (2) The independence of directors.
- 2 (3) The committee structure of the board.
- 3 (4) The education and training of board members.
- 4 (5) Compliance with the bank's code of ethics.

5 (b) In making the assessment authorized by subsection (a) of this section, the OCOB
6 shall take into consideration publicly issued regulations and guidance of the Commissioner and
7 the bank's primary federal supervisor and may consider, among other factors, the asset size of
8 the bank, the range and complexity of the activities in which the bank is engaged, the various
9 risks undertaken by the bank, the experience and abilities of the bank's directors and officers,
10 and the adequacy of the bank's existing policies, procedures, and internal controls.

11 **"§ 53C-4-11. Reserve fund.**

12 (a) Each bank shall maintain a reserve fund as follows:

- 13 (1) If the bank is a member of the Federal Reserve System, it shall maintain a
14 reserve fund in accordance with the requirements of the Federal Reserve
15 Board.
- 16 (2) All other banks shall maintain a reserve fund as required by the
17 Commissioner.

18 (b) The Commissioner may require a level of reserve fund for nonmember banks as
19 provided in subsection (a)(2) of this section, taking into consideration the level of liquidity the
20 Commissioner deems necessary for the safe and sound operation of the banks.

21 (c) In establishing the required level of reserve fund, the Commissioner shall include
22 the following types of liquid reserves:

- 23 (1) Cash on hand, which shall include both United States currency and exchange
24 of any clearinghouse association or similar intermediary.
- 25 (2) Balances on demand from designated depository institutions.
- 26 (3) Obligations of the United States Treasury, any agency of the United States
27 government that is guaranteed by the United States government, and any
28 general obligation of this State or any political subdivision thereof that has
29 an investment grade rating of A or higher by a nationally recognized rating
30 service.

31 (d) Notwithstanding any other provision of this Chapter, in the event the reserve fund of
32 a bank falls below the level required under subsection (b) of this section, the Commissioner
33 may require the bank to do the following:

- 34 (1) Discontinue making any new extension of credit.
- 35 (2) Promptly restore its reserve fund to the applicable required level.

36 (e) In the event a bank shall fail to promptly restore its reserve fund to the applicable
37 level required within 10 days after the Commissioner directs it to do so, the Commissioner may
38 take such actions under Article 8 of this Chapter as the Commissioner deems necessary.

39 **"§ 53C-4-12. Compliance review committee.**

40 (a) For purposes of this section, the following definitions apply:

- 41 (1) "Compliance review committee" means an audit, loan review, or compliance
42 committee appointed by the board of directors of a bank, or any other person
43 to the extent the person acts at the direction of or reports to such a
44 committee, whose functions are to audit, evaluate, report, or determine
45 compliance with any of the following:
 - 46 a. Loan underwriting standards.
 - 47 b. Asset quality.
 - 48 c. Financial reporting to federal or State regulatory agencies.
 - 49 d. Adherence to the bank's investment, lending, accounting, ethical, or
50 risk assessment, and financial standards.
 - 51 e. Compliance with federal or State statutory requirements.

1 (2) As principal in any activity that is permissible or determined by the FDIC to
2 be permissible for a bank under the Federal Deposit Insurance Act, 12
3 U.S.C. § 1831a, or in any regulation, order, or written interpretation
4 thereunder.

5 (3) As principal in any activity that is permissible for a savings institution
6 organized under Chapters 54B or 54C of the General Statutes, or that is
7 permissible for a federal savings association under the Home Owners' Loan
8 Act of 1933, 12 U.S.C. § 1464, or in any regulation, order, or written
9 interpretation thereunder.

10 (4) In any activity other than as principal permitted under the Federal Deposit
11 Insurance Act, 12 U.S.C. § 1831a.

12 (c) In addition to the other powers described in this section, a bank shall have the power
13 to exercise all other powers that are reasonably necessary or incident to the exercise of the
14 powers authorized in subsections (a) and (b) of this section.

15 (d) Except as provided in subsection (e) of this section, a bank that proposes to engage
16 in any new activity shall apply to the Commissioner for approval to engage in the activity
17 before its commencement. If the new activity will be conducted in a new or existing subsidiary
18 in which the bank intends to make an investment, the bank shall apply to the Commissioner for
19 approval to engage in the activity before entering into the investment. The bank shall not
20 engage in the activity or make the investment unless and until the Commissioner issues a
21 written approval of the application. An application for approval shall contain a description of
22 the proposed activity and any other information required by the Commissioner. A copy of any
23 notice or application the bank is required to file with any bank supervisory agency with respect
24 to the proposed activity shall also be provided to the Commissioner. For the purpose of this
25 section, a "new activity" is any business activity in which the bank is not currently engaged.
26 The extension or relocation of an existing activity into a new department, division, or
27 subsidiary of the bank shall not be considered a new activity.

28 (e) No application for approval to engage in a new activity shall be required, provided
29 all of the following conditions are met as of the date the activity is commenced:

30 (1) The new activity is one described in subsection (a), (b), or (c) of this section.

31 (2) The bank is well-capitalized and well-managed as demonstrated by the
32 supervisory rating it received during its most recent safety and soundness
33 examination.

34 (3) No notice or application to engage in the new activity is required to be filed
35 by the bank with any federal banking regulator.

36 (f) A bank permitted to commence a new activity without prior application and
37 approval pursuant to subsection (e) of this section shall notify the Commissioner in writing of
38 the commencement of the new activity no later than the 30th day after the earlier of (i)
39 commencing the new activity or (ii) if applicable, making an investment in a subsidiary through
40 which the new activity will be conducted.

41 **"§ 53C-5-2. Investment authority.**

42 (a) In addition to any powers or investments authorized by any other section of this
43 Chapter, a bank may invest in the following:

44 (1) The shares or other securities of the following:

45 a. Any other depository institution.

46 b. Any industrial bank, bankers' bank, or other deposit-taking entity
47 chartered or existing under any federal or State law, including the
48 shares or other securities of clearing corporations defined in
49 G.S. 25-8-102, the shares or other securities of central reserve banks,
50 and the shares of an Edge Act bank. The investment of any bank in
51 the shares of a central reserve bank or bank organized under the Edge

- 1 Act, 12 U.S.C. § 611, et seq., shall at no time exceed ten percent
2 (10%) of the required capital of the bank making the investment.
- 3 c. Any company in which a federally chartered institution is authorized
4 to invest under any statute or any regulation, official circular,
5 bulletin, order, or written interpretation issued by the OCC.
- 6 (2) Bonds or notes issued by or fully and unconditionally guaranteed as to
7 principal and interest by the United States Treasury. No bank shall be
8 required to maintain a reserve against deposits secured by United States
9 Treasury bonds or notes equal in market value to the amount of such
10 deposits, and such bonds or notes shall be valid security for all loans and
11 deposits to the same extent as are any obligations of the United States.
- 12 (3) Federal farm loan bonds, notes, or similar obligations issued by a farm credit
13 system institution.
- 14 (4) Securities issued by federal home loan banks pursuant to the Federal Home
15 Loan Bank Act of 1932, as amended.
- 16 (5) Bonds or notes secured by a mortgage or deed of trust insured or guaranteed
17 by the Federal Housing Administration, Secretary of Housing and Urban
18 Development, or the Veterans Administration, or in mortgages or deeds of
19 trust on real estate that have been accepted for insurance or guarantee by the
20 Federal Housing Administration, Secretary of Housing and Urban
21 Development, or Veterans Administration, or in obligations of a national
22 mortgage association, which obligations are insured or guaranteed by the
23 United States government. No law of this State prescribing the nature,
24 amount, or form of security or requiring security upon which loans or
25 investments may be made, or prescribing the rates or time of payment of the
26 interest any obligation may bear, or prescribing the period for which loans or
27 investments may be made, shall apply to investments made pursuant to this
28 subsection.
- 29 (6) Mutual funds, but subject to rules or orders adopted by the Commissioner.
- 30 (b) A bank may make an investment in a subsidiary that will be operated as any of the
31 following:
- 32 (1) Bank operating subsidiary.
33 (2) Financial subsidiary.
34 (3) DPC subsidiary, as defined by G.S. 53C-1-4(30).
- 35 (c) An investment by a bank or a bank subsidiary pursuant to subsection (b) or (d) of
36 this section shall receive the same accounting and regulatory treatment as is accorded to such
37 investment by the bank's primary federal supervisor. No investment shall be made by a bank or
38 a bank subsidiary pursuant to subsection (b) or (d) of this section unless the following apply:
- 39 (1) The investment is approved by the board of directors of the bank.
40 (2) The bank has carefully investigated the business or activity in which the
41 subsidiary established by the investment will engage.
42 (3) The bank has established the risk management and financial controls
43 necessary to engage in the business or activity in a safe and sound manner.
44 (4) The bank has, and following the making of the investment and the
45 application of the provisions of this subsection, will continue to satisfy the
46 capital requirements of this Chapter.
- 47 (d) A bank operating subsidiary may make an investment of any size in a lower tier
48 subsidiary.
- 49 (e) Except as provided in subsection (f) of this section, a bank or bank operating
50 subsidiary proposing to make an investment described in subsection (b), (c), or (d) of this
51 section shall give prior written notice to the Commissioner, providing such detail as the

1 Commissioner may require. Unless the Commissioner, within 30 days following receipt of the
2 notice, notifies the bank or bank operating subsidiary that the Commissioner objects to the
3 proposed investment, the bank or bank operating subsidiary may complete the investment.
4 However, the Commissioner may extend the period within which to object to the proposed
5 investment if the Commissioner determines that it raises issues that require additional
6 information or additional time for analysis. While the objection period is so extended, the bank
7 or bank operating subsidiary may not proceed with respect to the proposed investment.

8 (f) The prior notice requirement provided by subsection (e) of this section shall not
9 apply if all of the following apply:

10 (1) The bank is well-capitalized and well-managed as demonstrated by the
11 supervisory rating it received during its most recent examination.

12 (2) Each activity of the subsidiary in which the investment is to be made is
13 either of the following:

14 a. One in which the bank is then engaged or has previously been
15 engaged, directly or through a different subsidiary, and for which all
16 necessary approvals of bank supervisory agencies and of the
17 Commissioner have previously been obtained and remain in effect.

18 b. One for which no prior notice or application for approval to any
19 federal bank supervisory authority is required.

20 (3) A bank that makes an investment pursuant to the exception created by this
21 subsection shall nevertheless notify the Commissioner in writing of the
22 investment within 30 days thereafter.

23 (g) Any bank, out-of-state bank, national bank, or any subsidiary thereof that engages in
24 an activity subject to licensure and/or regulation under the laws of this State, other than this
25 Chapter, shall be subject to licensure and/or regulation on a basis that does not arbitrarily
26 discriminate by the appropriate regulatory agency which licenses and/or regulates nonbanks
27 that engage in the same activity.

28 (h) The Commissioner shall monitor the impact of investment activities of banks and
29 their subsidiaries under this section on the safety and soundness of such banks. Any securities
30 owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at
31 public or private sale within six months after the date of acquiring the securities and, if not so
32 disposed of, they shall be charged to profit and loss account and no longer carried on the books
33 as an asset. The limit of time in which securities shall be disposed of or charged off the books
34 of the bank may be extended by the Commissioner if in the Commissioner's judgment it is for
35 the best interest of the bank that the extension be granted, provided that the limitations imposed
36 in this section on the ownership of shares or other equity ownership interest in companies are
37 suspended only to the extent that any bank operating under the supervision of the
38 Commissioner may subscribe for and purchase shares and other equity ownership interests in,
39 or debentures, bonds, or other types of securities of, any company organized under the laws of
40 the United States for the purposes of insuring the depositors a part or all of their funds on
41 deposit in banks to the extent as security ownership is required in order to obtain the benefits of
42 deposit insurance for such depositors.

43 (i) A bank may purchase, hold, and convey real estate other than bank premises for the
44 following purposes:

45 (1) As security for extensions of credit made or moneys due to it when that real
46 estate has been mortgaged to it in good faith.

47 (2) When the real estate has been purchased at sales upon foreclosures of
48 mortgages and deeds of trust held or owned by it, or on judgments or decrees
49 obtained and rendered for debts due to it, or through deeds in lieu of
50 foreclosure or other settlements affecting security of those debts. All real
51 property acquired under this subdivision shall be sold by the bank within

1 five years after it is acquired unless, upon application by the bank, the
2 Commissioner extends the time within which the sale shall be made.

3 (j) A bank's investment in any bonds or other debt obligations of any one person, other
4 than obligations of the United States government or an agency thereof, or other obligations
5 guaranteed by the United States, this State, another state, or other political subdivision of this
6 State or another state, shall at no time exceed ten percent (10%) of its required capital.

7 **"§ 53C-5-3. Banks, fiduciaries authorized to invest in securities approved by the**
8 **Secretary of Housing and Urban Development, Federal Housing**
9 **Administration, Veterans Administration.**

10 (a) Insured Mortgages and Obligation of National Mortgage Associations and Federal
11 Home Loan Banks. – It shall be lawful for all commercial and industrial banks, trust
12 companies, building and loan associations, savings and loan associations, insurance companies,
13 mortgagees and loan correspondents approved by the Secretary of Housing and Urban
14 Development or Federal Housing Administration, and other financial institutions engaged in
15 business in this State, and for guardians, executors, administrators, trustees, or others acting in
16 a fiduciary capacity in this State to invest, to the same extent that such funds may be invested in
17 interest-bearing obligations of the United States, their funds or moneys in their custody or
18 possession that are eligible for investment, in bonds or notes secured by a mortgage or deed of
19 trust insured or guaranteed by the Federal Housing Administration, Secretary of Housing and
20 Urban Development, or the Veterans Administration, or in mortgages or deeds of trust on real
21 estate which have been accepted for insurance or guarantee by the Federal Housing
22 Administration, Secretary of Housing and Urban Development, or Veterans Administration,
23 and in obligations of a national mortgage association, which obligations are insured or
24 guaranteed by the United States Government, or bonds, debentures, consolidated bonds, or
25 other obligations of any federal home loan bank or banks.

26 (b) Insured or Guaranteed Loans; Loans Purchased by National Mortgage Associations
27 and Federal Home Loan Banks. – All such banks, trust companies, building and loan
28 associations, savings and loan associations, insurance companies, mortgagees and loan
29 correspondents approved by the Secretary of Housing and Urban Development or Federal
30 Housing Administration, and other financial institutions, and also all such guardians, executors,
31 administrators, trustees, or others acting in a fiduciary capacity in this State, may make such
32 loans, secured by real estate, as the Secretary of Housing and Urban Development, the Federal
33 Housing Administration, a national mortgage association, or the Veterans Administration has
34 insured or guaranteed, or has made a commitment to insure or guarantee, and may obtain such
35 insurance or guarantee; provided, further, that the above designated financial institutions may
36 make loans, secured by real estate, that are eligible and committed for sale to a national
37 mortgage association, federal home loan bank, federal home loan mortgage corporation, or
38 other agency or instrumentality of the United States.

39 (c) Eligibility for Credit Insurance. – All banks, trust companies, building and loan
40 associations, savings and loan associations, insurance companies, mortgagees and loan
41 correspondents approved by the Secretary of Housing and Urban Development or Federal
42 Housing Administration, and other financial institutions, on being approved as eligible for
43 credit insurance by the Secretary of Housing and Urban Development, the Federal Housing
44 Administration, or the Veterans Administration, may make such loans as are insured by the
45 Secretary of Housing and Urban Development or Federal Housing Administration or insured or
46 guaranteed by the Veterans Administration.

47 (d) Certain Securities Made Eligible for Collaterals. – Whenever by statute of this State
48 collateral is required as security for the deposit of public or other funds; or deposits are required
49 to be made with any public official or department; or an investment of capital or surplus, or a
50 reserve or other fund is required to be maintained, consisting of designated securities, bonds,
51 and notes secured by a mortgage or deed of trust insured or guaranteed by the Secretary of

1 Housing and Urban Development, Federal Housing Administration, or Veterans
2 Administration, debentures issued by the Secretary of Housing and Urban Development or the
3 Federal Housing Administration and obligations of a national mortgage association shall be
4 eligible for such purposes.

5 (e) General Laws Not Applicable. – No law of this State prescribing the nature, amount,
6 or form of security or requiring security upon which loans or investments may be made, or
7 prescribing or limiting the rates or time of payment of the interest any obligation may bear, or
8 prescribing or limiting the period for which loans or investments may be made, shall be deemed
9 to apply to loans or investments made pursuant to the foregoing paragraphs.

10 "Article 6.

11 "Bank Operations.

12 **"§ 53C-6-1. Loans and extensions of credit.**

13 (a) A bank may make a loan or extension of credit secured by the pledge of its own
14 shares or the shares of its holding company, provided:

15 (1) When a bank exercises its security interest in shares of the bank or its
16 holding company, it shall dispose of all of the shares within a period of six
17 months. If the shares have not been disposed of within six months, the shares
18 shall be charged to profit and loss and no longer carried as an asset of the
19 bank. The Commissioner may extend the six-month period not to exceed an
20 additional six months.

21 (2) A bank may not extend credit to finance the purchase of or to carry shares of
22 the bank or the shares of its holding company. For purposes of this
23 subsection, the phrase "to carry" has the meaning set forth in 12 C.F.R. Part
24 221, as promulgated by the Federal Reserve Board.

25 (b) Loans and Extensions of Credit – Limitations:

26 (1) The total loans and extensions of credit, both direct and indirect, by a bank
27 to a person, other than a municipal corporation for money borrowed,
28 including in the liabilities of a company the liabilities of the several
29 members of the company, outstanding at one time and not fully secured, as
30 determined in a manner consistent with subdivision (2) of this subsection, by
31 collateral having a market value at least equal to the amount of the loan or
32 extension of credit, shall not exceed the greater of fifteen percent (15%) of
33 the capital of the bank or the percentage permitted for national banks in this
34 State by statute or regulation of the Comptroller of the Currency.

35 (2) The total loans and extensions of credit, both direct and indirect, by a bank
36 to a person outstanding at one time and fully secured by readily marketable
37 collateral having a market value, as determined by reliable and continuously
38 available price quotations, at least equal to the amount of the loan or
39 extension of credit outstanding, shall not exceed the greater of ten percent
40 (10%) of the capital of the bank or the percentage permitted for national
41 banks by statute or regulation of the Comptroller of the Currency. This
42 limitation shall be separate from and in addition to the limitation contained
43 in subdivision (1) of this subsection.

44 (3) The following shall not be considered as extensions of credit within the
45 meaning of this section; provided that the limitations of this subsection shall
46 not apply to loans or obligations to the extent that they are secured or
47 covered by guarantees or by commitments or agreements to take over or
48 purchase the same made by any federal reserve bank or by the United States
49 or any department, board, bureau, commission, or establishment of the
50 United States, including any corporation wholly owned, directly or
51 indirectly, by the United States.

- 1 a. The discount of bills of exchange drawn in good faith against actual
2 existing values.
- 3 b. The discount of solvent trade acceptances or other solvent
4 commercial or business paper actually owned by the person
5 negotiating the same.
- 6 c. Loans or extensions of credit secured by a segregated deposit account
7 in the lending bank.
- 8 d. The purchase of bankers' acceptances of the kind described in section
9 13 of the Federal Reserve Act and issued by other depository
10 institutions.
- 11 e. The purchase of any notes and the making of any loans secured by
12 not less than a like face amount of bonds of the United States or any
13 agency of the United States; or other obligations guaranteed by the
14 United States government or the State of North Carolina; or
15 certificates of indebtedness of the United States, or agency thereof;
16 or other obligations guaranteed by the United States government.
- 17 (4) For purposes of this subsection, the following definitions and conditions
18 apply:
- 19 a. "Person" includes an individual or a corporation, partnership, trust,
20 association, joint venture, pool, syndicate, sole proprietorship,
21 unincorporated organization, or any other form of entity not
22 specifically listed; provided, the term "person" shall not include (i) a
23 clearing organization registered with the Commodity Futures Trading
24 Commission (or its successor) or the Securities and Exchange
25 Commission (or its successor) or any federal banking agency or (ii) a
26 bank's affiliates.
- 27 b. Loans or extensions of credit to one person include loans made to
28 other persons when the proceeds of the loans or extensions of credit
29 are to be used for the direct benefit of the first person or the persons
30 are engaged in a common enterprise.
- 31 c. For purposes of this section, extensions of credit by a bank to a
32 person shall include the bank's credit exposures to the person in
33 derivative transactions with the bank.
- 34 d. "Derivative transaction" includes any transaction that is a contract,
35 agreement, swap, warrant, note, or option that is based, in whole or
36 in part, on the value of, any interest in, or any quantitative measure or
37 the occurrence of any event relating to one or more commodities,
38 securities, debt instruments, currencies, interest or other rates,
39 indices, or assets.
- 40 e. Credit exposure to a person in connection with a derivative
41 transaction shall be determined based on an amount that the bank
42 reasonably determines, in accordance with customary industry
43 practices under the terms of the derivative transaction or otherwise,
44 would be its loss if the person were to default on the date of
45 determination, taking into account any netting and collateral
46 arrangements and any guarantees or other credit enhancements,
47 provided that the bank may elect to determine credit exposure on the
48 basis of such other method of determining credit exposure as may be
49 permitted by the bank's primary federal regulator.

1 (c) The Commissioner shall monitor the lending activities of banks under this section
2 for undue credit concentrations and inadequate risk diversification that could adversely affect
3 the safety and soundness of the banks.

4 (d) Rules adopted by the Commissioner to ensure that extensions of credit made by
5 banks are in keeping with sound lending practices and to promote the purposes of this Chapter
6 shall not prohibit a bank from making any extension of credit that is a permitted extension of
7 credit for a federally chartered institution.

8 **"§ 53C-6-2. Deposits.**

9 (a) A bank may, consistent with applicable law and safe and sound banking practices,
10 offer all types of deposit accounts upon such terms and conditions as the bank considers
11 appropriate.

12 (b) A bank shall secure insurance for its deposits from the FDIC.

13 **"§ 53C-6-3. Securing deposits.**

14 (a) A bank may not create a lien on its assets or otherwise secure the repayment of a
15 deposit, except as authorized or required by this section, other laws of this State, or federal law.

16 (b) A bank may pledge its assets to secure a deposit of the government of this State or
17 any other state, any agency or political subdivision of this State or any other state, the United
18 States government, any agency or instrumentality of the United States, or any Indian tribe
19 recognized by the United States government as eligible for the services provided to Indian
20 tribes by the Secretary of the Interior because of its status as an Indian tribe.

21 (c) This section does not prohibit the pledge of assets by a bank to secure the repayment
22 of money borrowed.

23 (d) An act, deed, conveyance, pledge, or contract in violation of this section is void.

24 **"§ 53C-6-4. Minors.**

25 (a) A bank may issue and operate a deposit account in the name of a minor or in the
26 name of two or more individuals, one or more of whom are minors, and receive payments, pay
27 withdrawals, accept a pledge of the account, issue automated teller machine (ATM) and debit
28 cards, contract for overdraft protection, and act in any other manner with respect to the account
29 on the order of the minor with like effect as if the minor were of full age and legal capacity.
30 Any payment to or at the direction of a minor is a discharge of the bank to the extent thereof.
31 The account shall be held for the exclusive right and benefit of the minor and any joint owners,
32 free from the control of all other persons except creditors. A minor who obtains a deposit
33 account from a bank under this subsection, whether individually or together with others, is
34 bound by the terms of the deposit account agreement to the same extent as if the minor were of
35 full age and legal capacity.

36 (b) Any bank may lease a safe deposit box to a minor or to two or more individuals, one
37 or more of whom are minors. With respect to any such lease, a bank may deal with the minor in
38 all regards as if the minor were of full age and legal capacity. A minor entering a lease
39 agreement with a bank under this subsection, whether individually or together with others, is
40 bound by the terms of the safe deposit box agreement to the same extent as if the minor were of
41 full age and legal capacity.

42 (c) If a minor with a deposit account, other than a joint account with right of
43 survivorship or a Payable on Death account, dies, a parent or legal guardian of the minor may
44 access and withdraw the funds on deposit, and the bank is discharged to the extent of any
45 withdrawal. If a minor with a safe deposit box dies, the provisions of G.S. 28A-15-13 shall
46 control the opening, inventory, and release of contents of the safe deposit box.

47 (d) This section shall not affect the law governing transactions with minors in cases
48 outside the scope of this section, including transactions that constitute an extension of credit to
49 the minor.

50 **"§ 53C-6-5. Reserved for future codification purposes.**

51 **"§ 53C-6-6. Joint accounts.**

1 remains liable for any debts incurred in connection with the joint account during the period in
2 which the individual was a named joint tenant.

3 (j) Any joint account created under the provisions of G.S. 53-146.1 as it existed prior to
4 the effective date of this section shall for all purposes be governed by the provisions of this
5 section after the effective date of this section, and any reference to G.S. 53-146.1 in any
6 statement electing a right of survivorship shall be deemed a reference to this section.

7 (k) This section shall not be deemed exclusive. Deposit accounts not conforming to this
8 section shall be governed by other applicable provisions of the General Statutes or the common
9 law, as appropriate.

10 **"§ 53C-6-7. Payable on Death accounts.**

11 (a) If any natural person establishing a deposit account shall execute a written
12 agreement with the bank containing a statement that it is executed pursuant to the provisions of
13 this section and providing for the account to be held in the name of the natural person as owner
14 for one or more beneficiaries, the account and any balance thereof shall be held as a Payable on
15 Death account. The account shall have the following incidents:

16 (1) Any owner during the owner's lifetime may change any designated
17 beneficiary by a written direction to the bank.

18 (2) If there are two or more owners of a Payable on Death account, the owners
19 shall own the account as joint tenants with right of survivorship and, except
20 as otherwise provided in this section, the account shall have the incidents set
21 forth in G.S. 53C-6-6.

22 (3) Any owner may withdraw funds by writing checks or otherwise, as set forth
23 in the account contract, and receive payment in cash or check payable to the
24 owner's personal order.

25 (4) If the beneficiary is a natural person, there may be one or more beneficiaries,
26 and the following shall apply:

27 a. If only one beneficiary is living and of legal age at the death of the
28 last surviving owner, the beneficiary shall be the owner of the
29 account and payment by the bank to the owner shall be a total
30 discharge of the bank's obligation as to the amount paid. If two or
31 more beneficiaries are living at the death of the last surviving owner,
32 they shall be owners of the account as joint tenants with right of
33 survivorship as provided in G.S. 53C-6-6, and payment by the bank
34 to the owners or any of the owners shall be a total discharge of the
35 bank's obligation as to the amount paid.

36 b. If only one beneficiary is living and that beneficiary is not of legal
37 age at the death of the last surviving owner, the bank shall transfer
38 the funds in the account to the general guardian or guardian of the
39 estate, if any, of the minor beneficiary. If no guardian of the minor
40 beneficiary has been appointed, the bank shall hold the funds in a
41 similar interest-bearing account in the name of the minor until the
42 minor reaches the age of majority or until a duly appointed guardian
43 withdraws the funds.

44 (5) If the beneficiary is an entity other than a natural person, there shall be only
45 one beneficiary.

46 (6) If one or more owners survive the last surviving beneficiary who was a
47 natural person, or if a beneficiary who is an entity other than a natural person
48 should cease to exist before the death of the owner, the account shall become
49 an individual account of the owner, or a joint account with right of
50 survivorship of the owners, and shall have the legal incidents of an

1 individual account in a case of a single owner or a joint account with right of
2 survivorship, as provided in G.S. 53C-6-6, in the case of multiple owners.

- 3 (7) Prior to the death of the last surviving owner, no beneficiary shall have any
4 ownership interest in a Payable on Death account. Funds in a Payable on
5 Death account established pursuant to this subsection shall belong to the
6 beneficiary or beneficiaries upon the death of the last surviving owner, and
7 the funds shall be subject only to the personal representative's right of
8 collection as set forth in G.S. 28A-15-10(a)(1). Payment by the bank of
9 funds in the Payable on Death account to the beneficiary or beneficiaries
10 shall terminate the personal representative's authority under
11 G.S. 28A-15-10(a)(1) to collect against the bank for the funds so paid, but
12 the personal representative's authority to collect such funds from the
13 beneficiary or beneficiaries is not terminated.

14 The natural person establishing an account under this subsection shall sign a statement
15 containing language set forth in a conspicuous manner and substantially similar to the language
16 set out below. The language may be on a signature card or in an explanation of the account that
17 is set out in a separate document whose receipt is acknowledged by the person establishing the
18 account:

19 "BANK (or name of institution)
20 PAYABLE ON DEATH ACCOUNT
21 G.S. 53C-6-7

22 I (or we) understand that by establishing a Payable on Death account under the provisions
23 of North Carolina General Statute 53C-6-7 that:

- 24 1. During my (or our) lifetime I (or we), individually or jointly, may withdraw
25 the money in the account.
26 2. By written direction to the bank (or name of institution) I (or we),
27 individually or jointly, may change the beneficiary or beneficiaries.
28 3. Upon my (or our) death, the money remaining in the account will belong to
29 the beneficiary or beneficiaries, and the money will not be inherited by my
30 (or our) heirs or be controlled by will.

31 "

32 (b) This section shall not be deemed exclusive. Deposit accounts not conforming to this
33 section shall be governed by other applicable provisions of the General Statutes or the common
34 law, as appropriate.

35 (c) No addition to the accounts, nor any withdrawal, payment, or change of beneficiary,
36 shall affect the nature of the account as Payable on Death accounts or affect the right of any
37 owner to terminate the account.

38 (d) This section does not repeal or modify any provisions of law relating to estate taxes.

39 **"§ 53C-6-8. Personal agency accounts.**

40 (a) Any person may establish a personal agency account by written contract containing
41 a statement that it is executed pursuant to the provisions of this section. A personal agency
42 account may be any type of deposit account. The written contract shall name an agent who
43 shall have authority to act on behalf of the depositor in the manner set out in this subsection.
44 The agent shall have the authority to do the following:

- 45 (1) Make, sign, or execute checks drawn on the account or otherwise make
46 withdrawals from the account.
47 (2) Endorse checks made payable to the principal for deposit only into the
48 account.
49 (3) Deposit cash or negotiable instruments, including instruments endorsed by
50 the principal, into the account.

1 (1) Beneficial ownership of the account vests exclusively in the minor. All
2 interest credited to the account shall belong to the minor and shall be
3 reported to the appropriate taxing authorities in the name of the minor using
4 the minor's taxpayer identification number.

5 (2) Except as otherwise provided, control of the account vests exclusively in the
6 custodian whose name appears on the bank's records for the account. If there
7 is more than one custodian named on the bank's account records, each may
8 act independently. Any one or more of the custodians named on the bank's
9 records may turn over control of the account to the minor at any time, either
10 before or after the minor reaches the age of majority.

11 (3) If the custodian has not already transferred control, then after the minor
12 beneficiary reaches the age of majority, the beneficiary may instruct the
13 bank to transfer control to the beneficiary and remove the named custodian.

14 (4) If the custodian or, if more than one custodian is on the account, the last of
15 the custodians to survive dies before the minor reaches the age of majority,
16 the minor's parent or the minor's legal guardian may act as custodian or
17 name another custodian on the account.

18 (b) This section shall not be deemed exclusive. Accounts not conforming to this section
19 shall be governed by other applicable provisions of the General Statutes, including Chapter
20 33A, the North Carolina Uniform Transfers to Minors Act, or the common law, as appropriate.

21 **"§ 53C-6-10. Payment of balance of deceased person or person under disability to**
22 **personal representative or guardian.**

23 (a) A bank may pay any balance on deposit to the credit of any deceased individual to
24 the duly qualified personal representative, collector, or public administrator of the decedent
25 who is qualified as such under the laws of any state.

26 (b) A bank may pay any balance on deposit to the credit of any individual judicially
27 declared incompetent or otherwise under a legal disability to the duly qualified personal
28 representative, guardian, curator, conservator, or committee of the person declared incompetent
29 or under disability who is qualified as such under the laws of any state.

30 (c) The presentation of a letter of qualification as personal representative, collector,
31 public administrator, guardian, curator, conservator, or committee of the person issued or
32 certified by the appointing court shall be conclusive proof of the jurisdiction of the court
33 issuing the same and sufficient authority for the payment.

34 (d) Payment by a bank in good faith under the authority of this section discharges the
35 liability of the bank to the extent of the payment.

36 **"§ 53C-6-11. Powers of attorney; notice of revocation; payment after notice.**

37 (a) Any bank may continue to recognize any act of an attorney-in-fact or other agent
38 until the bank receives actual notice of the principal's death or a written notice of revocation
39 signed by the principal who granted the authority or, in the case of a company, evidence
40 satisfactory to the bank of the revocation. Payment by the bank to or at the direction of an
41 attorney-in-fact or other agent before receipt of the notice is a total discharge of the bank's
42 obligation as to the amount so paid.

43 (b) Notwithstanding that a bank has received written notice of revocation of the
44 authority of an attorney-in-fact or other designated agent, a bank may, until 10 days after
45 receipt of notice, pay any item made, drawn, accepted, or endorsed by the attorney-in-fact or
46 agent prior to the revocation, provided that the item is otherwise properly payable.

47 **"§ 53C-6-12. Account statements to be rendered annually or on request.**

48 (a) Every bank shall render an account statement for each deposit account at least
49 annually to the depositor; provided, however, the statements are not required for time deposits.
50 Every bank shall render a statement of account for each deposit account, including time
51 deposits upon receipt of an appropriate request reasonably made by a depositor.

1 **(b)** For purposes of this section, an account statement is deemed to have been
2 "rendered" to a depositor as of the earlier of the date the statement is mailed to the depositor's
3 address as shown on bank records and the date the account is posted to the bank's Web site in a
4 manner and a form ensuring the statement to be readily available to the depositor; provided
5 however, the bank and the depositor may agree that an account statement may be rendered by
6 other means.

7 **(c)** Nothing in this section shall be construed to relieve the depositor from the duty of
8 exercising due diligence in the review of an account statement rendered by the bank and of
9 timely notification to the bank upon discovery of any error.

10 **"§ 53C-6-13. Safe deposit boxes; unpaid rentals; procedure; escheats.**

11 **(a)** If the rental due on a safe deposit box is 90 days or more past due, the lessor bank
12 may send a notice by registered mail or certified mail, return receipt requested, to the last
13 known address of the lessee or by another means agreed to in writing by the lessor bank and the
14 lessee, stating that the safe deposit box will be opened and its contents stored at the expense of
15 the lessee unless payment of the rental is made within 30 days of the date of the mailing of the
16 notice or the date such notice is given by the means otherwise previously agreed to in writing
17 by the lessor bank and the lessee. If the rental is not paid within the stated period, the box may
18 be opened in the presence of an officer of the bank and of a notary public who is not a director,
19 officer, employee, or shareholder of the bank. The contents shall be sealed in a package by the
20 notary public, who shall write on the outside the name of the lessee and the date of the opening.
21 The notary public shall execute a certificate reciting the name of the lessee, the date of the
22 opening of the box, and a list of its contents. The certificate shall be included in the package,
23 and a copy of the certificate shall be sent by registered mail or certified mail, return receipt
24 requested, to the last known address of the lessee or by the means otherwise previously agreed
25 to in writing by the lessor bank and the lessee. The package then shall be placed in the general
26 vaults of the bank at a rental not exceeding the rental previously charged for the box.

27 **(b)** If the contents of the safe deposit box have not been claimed within two years of the
28 mailing or other permissible delivery of the copy of the certificate to the lessee, the bank may
29 send a further notice to the last known address of the lessee by registered mail or certified mail,
30 return receipt requested, to the last known address of the lessee or by a means otherwise
31 previously agreed to in writing by the lessor bank and the lessee, stating that unless the
32 accumulated charges are paid within 30 days of the date of the mailing of the notice, the
33 contents of the box will be delivered to the State Treasurer as abandoned property under the
34 provisions of Chapter 116B of the General Statutes.

35 **(c)** The bank shall submit to the State Treasurer a verified inventory of all of the
36 contents of the safe deposit box upon delivery of the contents of the box or such part thereof as
37 shall be required by the State Treasurer under G.S. 116B-55, but the bank may deduct from any
38 cash of the lessee in the safe deposit box an amount equal to accumulated charges for rental and
39 shall submit to the State Treasurer a verified statement of the charges and deduction. If there is
40 no cash or insufficient cash to pay accumulated charges in the safe deposit box, the bank may
41 submit to the State Treasurer a verified statement of accumulated charges or balance of the
42 accumulated charges due, and the State Treasurer shall remit to the bank the charges or balance
43 due, up to the value of the property in the safe deposit box delivered to the State Treasurer, less
44 any costs or expenses of sale; but if the charges or balance due exceeds the value of the
45 property, the State Treasurer shall remit only the value of the property, less costs or expenses of
46 sale. Any accumulated charges for safe deposit box rental paid by the State Treasurer to the
47 bank shall be deducted from the value of the property of the lessee delivered to the State
48 Treasurer.

49 **(d)** Any property, including documents or writings of a private nature, that has little or
50 no apparent financial value need not be sold but may be destroyed by the bank if the State
51 Treasurer declines to receive the property under G.S. 116B-69(a).

(e) An explanation of the contractual provisions pertaining to default, together with reference to this section, shall be printed on every contract for rental of a safe deposit box.

"§ 53C-6-14. Reproduction and retention of records; admissibility of copies in evidence; disposition of originals; record production generally.

(a) Any bank may cause any or all records kept by it to be recorded, copied, or reproduced by any photographic, reproduction, electronic, or digital process or method, or by any other records retention technology approved by rule or order of the Commissioner, of a kind that is capable of accurately converting the records into tangible form within a reasonable time. Each such converted tangible form of record also shall be deemed a record.

(b) Any tangible form of a record shall be deemed for all purposes to be an original record and shall be admissible in evidence in all courts and administrative agencies in this State, if otherwise admissible, and the bank may destroy or otherwise dispose of the original form of the record; provided, however, that a bank shall retain either the originals or convertible form of its records for such period as may be required by law or by rule or order of the Commissioner. Any bank may dispose of any original or convertible form of a record that has been retained for the period prescribed by law or by rule or order of the Commissioner for its class.

(c) Originals and converted tangible forms of records shall not be held inadmissible in any court action or proceeding on the grounds that they lack certification, identification, or authentication and shall be received as evidence if otherwise admissible in any court or quasi-judicial proceeding if they have been identified and authenticated by the live testimony of a competent witness or if the records are accompanied by a certificate substantially in the following form:

"CERTIFICATE REGARDING BANK RECORDS

1. The accompanying documents are true and correct copies of the records of [name of bank]. The records were made in the regular course of business of the bank at or near the time of the acts, events, or conditions they reflect.
2. The undersigned is authorized to execute this certificate.
3. This certificate is issued pursuant to G.S. 53C-6-14.

I certify, under penalty of perjury under the laws of the State of North Carolina, that the foregoing statements are true and correct.

Date: _____

Signature

Print or type name

Title

[Notarize as required by law for an affidavit]"

(d) This section supplements and does not supersede G.S. 8-45.1.

"§ 53C-6-15. Establishment of branches.

(a) A bank may establish one or more branches in this State, whether de novo or by acquisition of existing branches of another depository institution, with the prior written approval of the Commissioner. The Commissioner's approval may be given or withheld, in the Commissioner's discretion, in accordance with the provisions of subsection (c) of this section.

(b) A bank may establish branches in another state, whether de novo or by acquisition of existing branches of another depository institution, in accordance with the provisions of applicable federal law and the laws of the other state, upon prior written approval of the Commissioner. The Commissioner's approval may be given or withheld in the Commissioner's discretion in accordance with the provisions of subsection (c) of this section.

(c) A bank seeking authority to establish a branch shall make application to the Commissioner in a form acceptable to the Commissioner. Not more than 30 days before nor

1 less than 10 days after the filing of the application with the Commissioner, the applicant shall
2 publish public notice of the filing of the application. The public notice shall contain all of the
3 following:

- 4 (1) A statement that the application has been filed with the Commissioner.
5 (2) The physical address or location of the proposed branch, including street and
6 city or town.
7 (3) A statement that any interested person may make written comment on the
8 application to the Commissioner and that comments received by the
9 Commissioner within 14 days of the date of publication of the public notice
10 shall be considered. The public notice shall provide the then current mailing
11 address of the Commissioner.

12 (d) A bank may conduct any activities at a branch in another state authorized under this
13 section that are permissible for a bank chartered by the other state where the branch is located,
14 except to the extent the activities are expressly prohibited by the laws of this State or by any
15 rule or order of the Commissioner applicable to the bank.

16 (e) Upon receipt of an application to establish a branch, the Commissioner shall
17 conduct an examination of the pertinent facts and information and may request such additional
18 information as the Commissioner deems necessary to make a decision on the application. In
19 deciding whether to approve a branch application, the Commissioner shall take into account
20 such factors as the financial condition and history of the applicant; the adequacy of its capital;
21 the applicant's future earnings prospects; the character, competency, and experience of its
22 management; the probable impact of the branch on the condition of the applicant bank and
23 existing depository institutions in the community to be served; and the convenience and needs
24 of the community the proposed branch is to serve.

25 **"§ 53C-6-16. Change of location of a branch or principal office.**

26 (a) A bank may change the location of its principal office or a branch with the prior
27 written approval of the Commissioner. A request to relocate the principal office or a branch of
28 a bank shall be made in a form acceptable to the Commissioner and shall include information
29 regarding the reason for the proposed relocation, the distance and direction of the move, and
30 such other information as the Commissioner may require in order to reach a decision in the
31 matter.

32 (b) Not more than 30 days before nor less than 10 days after filing a request to relocate
33 the principal office or a branch of a bank, the applicant shall publish public notice of the
34 request. The public notice shall contain all of the following:

- 35 (1) A statement that the request has been filed with the Commissioner.
36 (2) The physical address of the principal office or branch to be relocated and the
37 physical address of the proposed new location.
38 (3) A statement that any interested person may make written comment on the
39 request to the Commissioner and that comments received by the
40 Commissioner within 14 days of the date of publication of the public notice
41 will be considered. The statement shall provide the then current mailing
42 address of the Commissioner.

43 (c) The Commissioner shall approve a request to relocate the principal office or a
44 branch of a bank if the relocation is to a site within the same vicinity as the original location, or
45 does not result in a material change in the primary service area of the principal office or branch,
46 or is considered important to the economic viability of the bank or the branch, or is otherwise
47 found not to be inconsistent with the public need and convenience.

48 **"§ 53C-6-17. Branch closings.**

49 A bank may close a branch upon providing written notice to the Commissioner and the
50 customers of the branch at least 90 days prior to the proposed closing. The notice shall include
51 the date the branch will close and posting, in a conspicuous manner on the branch premises for

1 a period of 30 days prior to the proposed closing date, a notice of its intent to close the branch.
2 The consolidation of two or more branches into a single location in the same vicinity shall not
3 be considered a closure subject to the 90-day and 30-day notice requirements of this section. To
4 be considered a consolidation, the bank shall request consolidation treatment from the
5 Commissioner, who shall decide, in his or her discretion, whether the branches to be
6 consolidated are considered to be in the same vicinity, with due consideration to the distance
7 between the branches and the nature of the market in which the branches are situated.

8 **"§ 53C-6-18. Non-branch bank business offices.**

9 (a) A bank may establish one or more non-branch bank business offices as defined by
10 G.S. 53C-1-4(46).

11 (1) If a proposed non-branch bank business office will offer a product, service,
12 or other type of business not previously engaged in by the bank, the bank
13 shall provide the Commissioner with written notification of the intent to
14 open the office. The notification shall include the proposed location of the
15 office and a description of the business to be conducted at the office. If the
16 Commissioner does not request additional information or object to its
17 establishment within 10 days of the date of receipt of the notification, the
18 non-branch bank business office shall be deemed approved. In deciding
19 whether to object to the establishment of a non-branch bank business office,
20 the Commissioner shall consider, without limitation, whether the business
21 proposed to be conducted at the non-branch bank business office is
22 permissible for a bank, the costs of its establishment and ongoing operation
23 and the impact of the costs on the bank's capital and profitability, and the
24 ability of the bank's management to conduct the proposed business.

25 (2) If a proposed non-branch bank business office will offer only products,
26 services, or other types of business already engaged in by the bank, the bank
27 shall provide the Commissioner with written notification of the intent to
28 open the office.

29 (b) An out-of-state bank may establish and operate a non-branch bank business office in
30 this State upon written notice to the Commissioner.

31 (c) A bank or an out-of-state bank may close a non-branch bank business office at any
32 time with notice to the Commissioner.

33 (d) No deposits may be taken at a non-branch bank business office.

34 **"§ 53C-6-19. Operations; suspension.**

35 (a) A bank, any of its branches, and any of its non-branch bank business offices may
36 operate on such days and during such hours, and may observe such holidays, as the bank's
37 board of directors shall designate.

38 (b) Whenever the Commissioner determines that an emergency exists or is pending in
39 this State or any part thereof, the Commissioner may authorize banks operating in the affected
40 area or areas to suspend any or all of their operations in such area or areas for such period or
41 periods as the Commissioner establishes. An emergency is any condition or occurrence that
42 may interfere with a bank's operations or poses an existing or imminent threat to the safety or
43 security of persons or property, or both.

44 (c) In the event that an emergency exists or is pending in this State or any part thereof
45 and a bank operating in the affected area or areas is unable to communicate the existence or
46 pendency of the emergency to the OCOB, an officer of the bank may suspend any or all of the
47 bank's operations in the affected area or areas without the prior approval of the Commissioner.
48 The bank shall give notice of such closing to the Commissioner as soon as practicable.

49 "Article 7.

50 "Control Transactions; Combinations; Conversions.

51 "Part 1. Change in Control.

1 **"§ 53C-7-101. Control transactions.**

2 (a) Except as otherwise expressly permitted by this section, a person shall not engage in
3 a control transaction, as defined by G.S. 53C-1-4(22), involving a bank without the prior
4 approval of the Commissioner. A person may contract to engage in a control transaction with
5 the consummation of such control transaction being subject to receipt of the approval of the
6 Commissioner. Each bank shall report to the Commissioner any changes in its directors,
7 president, chief executive officer, chief financial officer, chief loan officer, or chief credit
8 officer by the close of the second day on which the holding company is open for business
9 following such change.

10 (b) The Commissioner may require a person who is obligated to file an application
11 under this Part to appoint an agent resident in this State for service of process upon the filing of
12 such notice or as a condition to the acceptance of such application for review. The application
13 for approval shall be in a form required by the Commissioner and shall be accompanied by
14 such fee as may be required by rule.

15 (c) The following transactions shall not constitute a control transaction requiring the
16 prior approval of the Commissioner:

17 (1) The acquisition of control over voting securities in connection with securing,
18 collecting, or satisfying a debt previously contracted for in good faith and
19 not for the purpose of acquiring control of the bank, if the acquiring person
20 files a notice with the Commissioner, in the form required by the
21 Commissioner, describing such transaction at least 10 days before the
22 acquiring person first votes or directs the voting of the voting securities.

23 (2) The acquisition of control over voting securities by a person who has
24 previously engaged in a control transaction with respect to the bank after
25 receiving the approval of the Commissioner under this Article, which
26 approval permits the acquisition of control over additional voting securities,
27 or any person who is an affiliate of the person previously engaging in the
28 approved control transaction with the permission and who is identified in the
29 application submitted for the approval, if the acquiring person files a notice
30 with the Commissioner, in the form required by the Commissioner,
31 describing the transaction at least 10 days before the acquiring person or
32 affiliate thereof first votes or directs the voting of the voting securities.

33 (3) An acquisition of control over voting securities by operation of law, will, or
34 intestate succession, if the acquiring person files a notice with the
35 Commissioner, in the form required by the Commissioner, describing the
36 acquisition or transfer at least 10 days before the acquiring person first votes
37 or directs the voting of the voting securities.

38 (4) Bona fide gifts.

39 (5) A transaction exempted by rules, orders, or declaratory rulings of the
40 Commissioner issued because approval of such a transaction is not necessary
41 to achieve the objectives of this Chapter.

42 (6) An acquisition of control over voting securities in a transaction subject to
43 approval under section 3 of the Bank Holding Company Act, as amended
44 (12 U.S.C. § 1842).

45 (d) Upon receipt of a notice described in subsection (c), the Commissioner may, before
46 the 10th day following the receipt, notify the acquiring person of the Commissioner's objection
47 to the exercise of control over the voting securities or may require the acquiring party to submit
48 further information before exercising control over the voting securities. An acquiring person
49 receiving a notice of objection shall be required to submit an application for approval of a
50 control transaction. An acquiring person receiving a notice to submit further information may
51 be required to provide any information that would be included in an application for approval of

1 a control transaction. In the event such an acquiring person is comprised of a group of persons,
2 the Commissioner may require each member of the group to submit relevant information.

3 (e) All voting securities over which control has been acquired by an acquiring person
4 shall not be voted on any matter submitted to a vote of the holders of the outstanding voting
5 securities of the bank and shall be deemed authorized but unissued for purposes of determining
6 the presence of a quorum of holders of voting securities until such time as follows:

7 (1) The Commissioner has approved an application for approval of a control
8 transaction with respect to the voting securities.

9 (2) The transaction is one listed in subsection (c) of this section that does not
10 require the filing of a notice with the Commissioner.

11 (3) The transaction is one listed in subsection (c) of this section that requires a
12 notice to be filed with the Commissioner and the Commissioner has not
13 issued an objection to the notice and any requirement of the Commissioner
14 for the filing of further information has been determined by the
15 Commissioner to have been satisfied.

16 **"§ 53C-7-102. Application regarding a control transaction.**

17 (a) A person seeking approval of a control transaction involving a bank under this
18 Article shall file the following with the Commissioner:

19 (1) An application in the form prescribed by the Commissioner.

20 (2) All filing fees required by a rule of the Commissioner.

21 (3) Such information as is required by a rule of the Commissioner or as is
22 deemed by the Commissioner to achieve the objectives of this Chapter.

23 (b) In the event a person submitting an application is a group of persons, the
24 Commissioner may require each member of the group to submit information relevant to the
25 application.

26 (c) Notwithstanding any laws to the contrary, information about the character,
27 competence, or experience of an acquiring person or its proposed management personnel or
28 affiliates shall be deemed a record of the Commissioner and subject to G.S. 53C-2-8.

29 **"§ 53C-7-103. Public notice.**

30 A person filing an application for approval of a control application shall publish a public
31 notice of the filing of the application not more than 30 days before nor more than 10 days after
32 the filing of the application with the Commissioner. The public notice shall contain the
33 following:

34 (1) A statement that the application has been filed with the Commissioner.

35 (2) The name of the applicable bank and the address of its principal office.

36 (3) A statement that any interested person may make written comment on the
37 proposed control transaction and that comments received by the
38 Commissioner within 14 days of the date of the publication of the public
39 notice shall be considered. The public notice shall provide the current
40 mailing address of the Commissioner.

41 **"§ 53C-7-104. Actions on control transaction applications.**

42 (a) The Commissioner shall examine the proposed control transaction, including the
43 character, competence, and experience of the acquiring person and its proposed management
44 personnel, to determine whether the interests of the customers and communities served by the
45 bank would be adversely affected by the proposed control transaction. Not later than the 60th
46 day following receipt of a completed application for approval of a control transaction, unless
47 extraordinary circumstances require a longer period of review, the Commissioner shall approve
48 or deny the application.

49 (b) The Commissioner may deny an application for approval of a control transaction for
50 any of the following reasons:

- 1 (1) The financial condition of the person seeking approval of a control
2 transaction could jeopardize the financial stability of the bank or the
3 financial interests of its customers.
- 4 (2) An examination of the character, competence, and experience of any
5 acquiring person or of any of the proposed management personnel shows
6 that it would not be in the interest of the depositors of the bank, or in the
7 interest of the public, to permit the person to control the bank.
- 8 (3) The plans or proposals of the person seeking approval with respect to
9 exercising control over the bank would not be in the best interests of the
10 bank's customers.
- 11 (4) Upon the effective date of such proposed control transaction, the bank would
12 not be solvent, have inadequate capital, or not be in compliance with this
13 Chapter or rules of the Commissioner.
- 14 (5) The application for approval is incomplete.
- 15 (6) If the acquiring person solicits votes for the approval of or consents to the
16 control transaction from the holders of the voting securities of the bank,
17 adequate and complete disclosures of all material information about the
18 proposed control transaction, together with a prominent statement that
19 neither the control transaction nor any solicitation of the holders' votes or
20 consents have been approved by the Commissioner and that any
21 representation to the contrary is a criminal offense, have not been made to
22 the holders.

23 (c) If an application filed under this Part is approved by the Commissioner, the control
24 transaction may become effective. All conditions to approval set forth in the order of the
25 Commissioner shall be enforceable against the person, and each member of a group of persons,
26 receiving the approval.

27 **"§ 53C-7-105. Appeal.**

28 Any order of the Commissioner denying an application for approval of a control transaction
29 may be appealed to the Commission by the person filing the application denied, as provided in
30 G.S. 53C-2-6.

31 "Part 2. Combinations.

32 **"§ 53C-7-201. Combination authority.**

33 With the approval of the Commissioner, a bank may combine with one or more depository
34 institutions or non-depository institutions, provided that the bank is the surviving entity in any
35 combination with a non-depository institution. The application for approval shall be in the form
36 required by the Commissioner and shall be accompanied by a fee as set forth by rule.

37 **"§ 53C-7-202. Combination application and investigation.**

38 (a) A bank seeking approval of a combination shall file with the Commissioner an
39 application for approval, copies of the agreement under which the bank proposes to effect the
40 combination, and such additional information as the Commissioner shall require by rule or as is
41 required by the Commissioner in connection with the application in order to achieve the
42 objectives of this Chapter.

43 (b) A bank filing an application for approval of a combination shall publish a public
44 notice of the filing of the application not more than 30 days before nor more than 10 days after
45 the filing of the application with the Commissioner. The public notice shall contain the
46 following:

- 47 (1) A statement that the application has been filed with the Commissioner.
- 48 (2) The names of the parties to the proposed combination and the addresses of
49 their principal offices.
- 50 (3) A statement that any interested person may make written comment on the
51 proposed combination and that comments received by the Commissioner

1 within 14 days of the date of the publication of the public notice shall be
2 considered. The public notice shall contain the current mailing address of the
3 Commissioner.

4 (c) The Commissioner shall examine the proposed combination, including the
5 character, competency, and experience of the proposed directors and executive officers of the
6 surviving party of the combination, to determine whether the interests of the customers of and
7 communities served by the parties to the combination would be adversely affected by the
8 proposed combination.

9 (d) Notwithstanding any laws to the contrary, information about the character,
10 competence, or experience of the directors and executive officers of the parties to a
11 combination received by the Commissioner shall be subject to G.S. 53C-2-7(b).

12 **"§ 53C-7-203. Decision on application.**

13 Based on the application and the Commissioner's examination, the Commissioner shall
14 enter an order approving or denying approval of the proposed combination not later than the
15 60th day following the date the Commissioner notifies the parties that the application is
16 complete, unless extraordinary circumstances require a longer period of review.

17 **"§ 53C-7-204. Interim banks.**

18 The Commissioner may approve an application to organize an interim bank solely for the
19 purpose of effecting a combination under this Article. No interim bank shall transact any
20 business except as is incidental and necessary to its organization and the combination. The
21 Commissioner may set forth in the order approving the organization such additional conditions
22 with respect to the interim bank as the Commissioner deems necessary.

23 **"§ 53C-7-205. Fiduciary powers and liabilities of North Carolina financial institutions**
24 **combining or transferring assets and liabilities.**

25 Whenever any North Carolina financial institution or federally chartered institution doing
26 business in this State shall combine with or shall sell to and transfer its assets and liabilities to
27 any other bank, trust institution, savings institution, or other company, as provided by the laws
28 of this State or the United States, all the then existing fiduciary rights, powers, duties, and
29 liabilities of the combining transferring institution, including the rights, powers, duties, and
30 liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity,
31 whether under appointment by order of court, will, deed, or other instrument, shall, upon the
32 effective date of the combination or sale and transfer, vest in, devolve upon, and thereafter be
33 performed by the surviving or transferee company, and such latter institution shall be deemed
34 substituted for and shall have all the rights and powers of the transferring institution.

35 **"§ 53C-7-206. Combination with federally chartered institution.**

36 A combination by a bank with a federally chartered institution in which the federally
37 chartered institution will be the surviving party shall be subject to approval by the chartering
38 authority of the federally chartered institution in accordance with the laws of the United States.

39 **"§ 53C-7-207. Combination with a subsidiary.**

40 (a) With the approval of the Commissioner, a bank may do any one the following:

- 41 (1) Combine with a subsidiary, so long as a bank is the resulting entity of the
42 combination.
- 43 (2) Combine a subsidiary with another company, if a subsidiary is the resulting
44 entity.
- 45 (3) Combine two or more subsidiaries of two or more banks under common
46 control of the same holding company.

47 The approval of the Commissioner is not required for a combination of a subsidiary and
48 another company when a subsidiary is not the resulting entity, which shall be effected in
49 accordance with organizational law applicable to each, or for a combination of two or more
50 subsidiaries of the same bank.

1 (b) The bank seeking approval of the combination shall file with the Commissioner an
2 application for approval and such additional information as the Commissioner shall require by
3 rule or as is required by the Commissioner in connection with the application in order to
4 achieve the objectives of this Chapter. The bank shall pay to the Commissioner a fee as set
5 forth by rule.

6 (c) The Commissioner shall examine the proposed combination to determine whether
7 the customers and communities served by the bank would be adversely affected by the
8 combination, the combination would cause the bank to not be solvent, have inadequate capital,
9 or not be in compliance with this Chapter or the rules of the Commissioner, or the combination
10 would present other risks to the safe and sound operation of the bank deemed unacceptable by
11 the Commissioner.

12 **"§ 53C-7-208. Fiduciary powers and liabilities of combining banks.**

13 Whenever any bank shall combine with another depository institution and the other
14 depository institution shall be the resulting institution, all the then existing fiduciary rights,
15 powers, duties, and liabilities of the combining bank, including its rights, powers, duties, and
16 liabilities as a fiduciary, shall, upon the effective date of the combination, vest in the resulting
17 depository institution, and the resulting depository institution shall be deemed substituted for
18 the combining bank for all fiduciary purposes.

19 **"§ 53C-7-209. Appeal.**

20 Any order of the Commissioner denying an application for approval of a combination may
21 be appealed to the Commission by a party to the combination as provided in G.S. 53C-2-6.

22 "Part 3. Charter Conversion.

23 **"§ 53C-7-301. Conversion to a North Carolina bank charter.**

24 (a) Any depository institution that is not a bank may apply to the Commissioner for
25 permission to convert into a bank and for certification of related amendments to its
26 organizational documents necessary to effect the conversion. The application for approval shall
27 be in the form required by the Commissioner and shall be accompanied by a fee as set forth by
28 rule.

29 (b) A plan of conversion shall be submitted as a part of the application filed with the
30 Commissioner. The Commissioner may require amendment of the plan.

31 (c) The Commissioner shall approve the plan of conversion, as amended if applicable,
32 if upon examination the Commissioner finds the following:

33 (1) The resulting bank will commence operations in a safe, sound, and prudent
34 manner with adequate capital, liquidity, reserves, asset composition, and
35 earnings prospects.

36 (2) The directors and officers of the converting institution are qualified by
37 character, competency, and experience to control and operate the resulting
38 bank in a legal and proper manner.

39 (3) The interests of the converting institution's customers, creditors, and
40 shareholders will not be materially and adversely affected by the proposed
41 conversion.

42 (4) The plan of conversion is not in violation of the converting institution's
43 applicable organizational law.

44 (5) Adequate written disclosure of the material terms of the plan of conversion
45 and other relevant material information has been or will be made to the
46 converting institution's equity ownership interest holders as required by the
47 converting institution's organizational law, including a statement in any such
48 written disclosure that any materials used to solicit the votes of the holders
49 have not been approved by the Commission or the Commissioner and that
50 any representation to the contrary is a criminal offense.

1 (d) Following approval of the plan of conversion, the Commissioner shall supervise and
2 monitor the conversion process in order to determine compliance by the converting institution
3 with the plan of conversion and applicable law.

4 (e) The Commissioner shall authorize by order the consummation of the conversion,
5 issue a charter, and permit the converting institution to file with the Secretary of State and other
6 public officials such documents as are necessary to effect the conversion when the
7 Commissioner determines the conversion process complied with the organizational law
8 applicable to the converting institution and the plan of conversion was approved, if required by
9 applicable organizational law, by such vote of the converting institution's equity ownership
10 interest holders as is required under the organizational law.

11 (f) The Commissioner may provide in the order authorizing the consummation of
12 conversion for the resulting bank to do the following:

13 (1) Wind up any activities legally engaged in by the converting institution at the
14 time of conversion but not permitted to banks.

15 (2) Return any assets and deposit liabilities legally held by the converting
16 institution at the time of the conversion but not permitted to be held by
17 banks.

18 The length, terms, and conditions of the transitional periods described in this subsection
19 shall be subject to the discretion of the Commissioner.

20 (g) Upon the effective date of the conversion, the converting institution shall continue
21 in existence as a bank, and all rights, liabilities, and obligations of whatever kind of the
22 converting institution shall continue and remain in its new form of organization. Except as may
23 be authorized by the Commissioner pursuant to subsection (f) of this section, the bank shall
24 have only those rights, powers, and duties authorized for or imposed upon banks by the laws of
25 this State and the United States. All actions and proceedings to which the converting institution
26 was party prior to conversion shall be unaffected by the conversion and shall proceed as if the
27 conversion had not been effected.

28 **"§ 53C-7-302. Appeal.**

29 Any order of the Commissioner denying an application for approval of a conversion to a
30 bank may be appealed to the Commission by the party filing the application as provided in
31 G.S. 53C-2-6.

32 **"§ 53C-7-303. Conversion by North Carolina bank.**

33 (a) A bank may convert to another form of depository institution under the laws of this
34 State, of another state, or the United States in accordance with applicable law.

35 (b) Upon the effective date of the conversion, the depository institution shall notify the
36 Commissioner of the effective date and file with the Commissioner a copy of its authorization
37 to operate as a depository institution certified by the applicable federal regulator or financial
38 institution regulator.

39 (c) Upon the effective date of the conversion, the resulting depository institution shall
40 cease to be a bank.

41 (d) Upon the effective date of the conversion, all rights, liabilities, and obligations of
42 whatever kind of the bank shall continue and remain in its new form of organization as a
43 depository institution organized under the laws of this State, another state, or the United States.
44 All actions and proceedings to which the bank was party prior to conversion shall be unaffected
45 by the conversion and shall proceed as if the conversion had not been effected.

46 "Article 8.

47 "Bank Supervision.

48 **"§ 53C-8-1. Commissioner has authority to supervise banks.**

49 (a) Every bank shall be under the supervision of the Commissioner. It shall be the
50 Commissioner's duty to enforce the banking laws through the employees and agents of the
51 OCOB. All banks shall conduct their business in a manner consistent with the banking laws.

1 **(b)** The Commissioner may enter into written agreements, cease and desist order
2 stipulations, cease and desist orders, consent orders, and similar arrangements with banks and
3 their holding companies, or either of them; may request resolutions be approved by boards of
4 directors of banks and their holding companies, or either of them; and may take other similar
5 corrective actions.

6 **(c)** Upon written request, the Commissioner may, notwithstanding any other provision
7 of law to the contrary, issue letters of interpretation, advisory opinions, or written guidance on
8 any laws under the Commissioner's jurisdiction, provided that the interpretations, opinions, and
9 guidance shall not have the force and effect of rules of law.

10 **"§ 53C-8-2. Assessments and fees.**

11 Banks shall pay the following assessments and fees into the OCOB within 10 days after
12 receipt of an invoice:

13 **(1)** Annual assessments. – Each bank shall pay a cumulative assessment based
14 on its total assets as shown on its report of condition made to the
15 Commissioner as of December 31 each year or the date most nearly
16 approximating the same, not to exceed the amount determined by applying
17 the following schedule:

18 a. On the first fifty million dollars (\$50,000,000) of assets, or fraction
19 thereof, ten thousand dollars (\$10,000).

20 b. On assets greater than fifty million dollars (\$50,000,000) but not
21 more than two hundred fifty million dollars (\$250,000,000), fourteen
22 dollars (\$14.00) per hundred thousand dollars (\$100,000), or fraction
23 thereof.

24 c. On assets greater than two hundred fifty million dollars
25 (\$250,000,000), but not more than five hundred million dollars
26 (\$500,000,000), eleven dollars (\$11.00) per hundred thousand dollars
27 (\$100,000), or fraction thereof.

28 d. On assets greater than five hundred million dollars (\$500,000,000),
29 but not more than one billion dollars (\$1,000,000,000), seven dollars
30 (\$7.00) per hundred thousand dollars (\$100,000), or fraction thereof.

31 e. On assets greater than one billion dollars (\$1,000,000,000), but not
32 more than ten billion dollars (\$10,000,000,000), four dollars (\$4.00)
33 per hundred thousand dollars (\$100,000), or fraction thereof.

34 f. On assets greater than ten billion dollars (\$10,000,000,000), two
35 dollars (\$2.00) per hundred thousand dollars (\$100,000), or fraction
36 thereof.

37 **(2)** Assessments on trust assets. – Each bank shall pay an assessment on trust
38 assets held by it in the amount of one dollar (\$1.00) per hundred thousand
39 dollars (\$100,000) of trust assets, or fraction thereof, except that banks are
40 not required to pay assessments on real estate held as trust assets.

41 **(3)** Special assessments. – If the Commissioner determines that the financial
42 condition or manner of operation of a bank warrants further examination or
43 an increased level of supervision, or in the event of a combination or
44 conversion, the Commissioner may charge, and the institutions shall pay, an
45 assessment equal to the reasonable cost of further examination, increased
46 level of supervision, or supervision with regard to the combination or
47 conversion. The Commissioner's determination of the cost of further
48 examination shall be, in the absence of manifest error, dispositive of the
49 issue of reasonableness.

50 **(4)** In the first half of each calendar year, the Commission shall review the
51 estimated cost of maintaining each division of the OCOB for the next fiscal

1 year. If the estimated assessments provided for under this Chapter for any
2 division shall exceed the estimated cost of maintaining that division for the
3 next fiscal year, then the Commission may reduce by a uniform percentage
4 any assessments provided for in this Chapter for that division. If the
5 estimated assessments provided for in this Chapter for any division shall be
6 less than the estimated cost of maintaining that division for the next fiscal
7 year, then the Commission may increase by a uniform percentage any
8 assessments provided for in this Chapter for that division to an amount that
9 will increase the amount of assessments to be collected to an amount at least
10 equal to the estimated cost of maintaining that division of the OCOB for the
11 next fiscal year.

12 **"§ 53C-8-3. Reports required of banks.**

13 (a) Each bank shall file the following with the Commissioner, at such times, on such
14 forms, and in such formats as the Commissioner may require:

15 (1) Annual reports of conditions.

16 (2) Periodic reports for interim periods within a year, not less than monthly in
17 any case.

18 (b) In addition to the reports filed pursuant to subsection (a) of this section, each bank
19 shall provide to the Commissioner copies of all applications and reports of condition filed by it
20 under applicable federal law contemporaneously with the filing of such application and reports
21 by the bank with its primary federal regulator.

22 (c) Nothing in this section shall be interpreted to limit the authority of the
23 Commissioner to request and obtain other information that the Commissioner may deem
24 necessary to discharge the duties of the Commissioner under this Chapter.

25 **"§ 53C-8-4. Examination by Commissioner.**

26 (a) The Commissioner may examine everything relating to the business of a bank or its
27 holding company, and may appoint examiners to make such examination. The examiners shall
28 file with the Commissioner a full report of the findings resulting from the examination,
29 including any violation of law or any unauthorized or unsafe practices of the bank or the
30 holding company disclosed by the examination.

31 (b) Examinations under subsection (a) of this section shall be conducted pursuant to
32 practices and procedures established by the OCOB, provided the Commissioner may take into
33 consideration the guidelines and requirements for such activity of the primary federal
34 supervisor of the bank or holding company.

35 (c) The Commissioner shall furnish a copy of the report of examination to the bank or
36 the holding company examined and may, upon request, furnish a copy of the report to the
37 primary federal regulator of the bank or its holding company and to the FDIC if not the bank's
38 primary federal regulator.

39 **"§ 53C-8-5. Examination of affiliates.**

40 The Commissioner, at his or her discretion, may examine the affiliates of a bank to the
41 extent it is necessary to safeguard the interest of depositors and creditors of the bank and of the
42 general public, and to enforce the provisions of this Chapter. The Commissioner may conduct
43 the examination in conjunction with any examination of the bank or an affiliate thereof
44 conducted by any other state or federal regulatory authority.

45 **"§ 53C-8-6. Access to books and records; right to issue subpoenas, administer oaths, and**
46 **examine witnesses.**

47 (a) The Commissioner and the Commissioner's examiners and agents:

48 (1) Shall have free access to all books and records of a bank, its holding
49 company, and their affiliates that relate to the business of the bank or the
50 holding company, and the books and records kept by an officer, agent, or

1 employee of the bank or holding company relating to or upon which any
2 record is kept.

3 (2) May subpoena witnesses and administer oaths or affirmations in the
4 examination of any director, officer, agent, or employee of the bank, its
5 holding company, or their affiliates or of any other person in relation to
6 affairs, transactions, and conditions of the bank, its holding company, or
7 their affiliates.

8 (3) May require the production of the records, books, papers, contracts, and
9 other documents of a bank, its holding company, and their affiliates.

10 (4) May order that improper entries be corrected on the books and records of a
11 bank, its holding company, and the bank's affiliates.

12 (b) The Commissioner may issue subpoenas duces tecum.

13 (c) If a person fails to comply with a subpoena so issued or a party or witness refuses to
14 testify on any matters, a court of competent jurisdiction, on the application of the
15 Commissioner, may compel compliance by proceedings for contempt as in the case of
16 disobedience of the requirements of a subpoena issued from the court or a refusal to testify in
17 the court.

18 **"§ 53C-8-7. Examiner making false report.**

19 If any bank examiner shall knowingly and willfully make any false or fraudulent report of
20 the condition of any bank that the examiner has examined with the intent to aid or abet the bank
21 or its affiliates in committing violations of any provision of this Chapter, or if any examiner
22 shall keep or accept any bribe or gratuity given for the purpose of inducing the examiner not to
23 file any report of examination of any bank, or if any examiner shall neglect to make an
24 examination of any bank by reason of having received or accepted any bribe or gratuity, the
25 examiner shall be guilty of a Class H felony.

26 **"§ 53C-8-8. Examiner disclosing confidential information.**

27 If any examiner or other employee of the OCOB fails to keep secret the facts and
28 information obtained in the course of an examination of a bank except as permitted or required
29 by this Chapter, the examiner shall be guilty of a Class 1 misdemeanor.

30 **"§ 53C-8-9. Loans or gratuities forbidden.**

31 (a) No bank, or any officer, director, employee, or affiliate thereof, shall make an
32 extension of credit or grant any gratuity to the Commissioner, any deputy commissioner, or any
33 bank examiner. Any person violating this provision shall be guilty of a Class 1 misdemeanor
34 and may be fined a sum equal to the amount of the extension made or the gratuity given. If the
35 Commissioner, any deputy commissioner, or any bank examiner accepts an extension of credit
36 or gratuity from any bank, or from any officer, director, employee, or affiliate thereof, that
37 individual shall be guilty of a Class 1 misdemeanor and may be fined a sum equal to the
38 extension of credit made or the gratuity given.

39 (b) Notwithstanding the provisions of subsection (a) of this section, the Commissioner
40 may exempt from the application of subsection (a) any deputy commissioner or any bank
41 examiner with respect to any extension of credit existing upon the hiring of the deputy
42 commissioner or bank examiner by the OCOB and any extension of the term or renewal of such
43 extension of credit made thereafter, so long as the extension of term or renewal has terms and
44 conditions generally available to customers of the applicable bank having generally the same
45 creditworthiness as the deputy commissioner or bank examiner.

46 **"§ 53C-8-10. Willfully and maliciously making derogatory reports.**

47 Any person who shall willfully and maliciously make, circulate, transmit, or otherwise
48 communicate any statement, rumor, or suggestion to one or more other persons that is directly
49 or by inference false and derogatory to the financial condition, or affects the solvency or
50 financial standing, of any bank, or who shall counsel, aid, procure, or induce another to make,

1 circulate, transmit, or otherwise communicate any such statement or rumor, shall be guilty of a
2 Class 1 misdemeanor.

3 **"§ 53C-8-11. Misapplication, embezzlement of funds.**

4 (a) Any person who, with intent to defraud or injure a bank or any other person or with
5 intent to deceive an officer of the bank or an employee of the OCOB appointed to examine the
6 affairs of the bank, commits any of the following acts shall be guilty of a felony:

7 (1) Embezzles, converts, or misapplies any of the money, funds, credit, or
8 property of the bank, whether owned by it or held in trust.

9 (2) Issues or puts forth a certificate of deposit; draws an order or bill of
10 exchange; makes an acceptance; assigns a note, bond, draft, bill of exchange,
11 mortgage, judgment, or decree; or fictitiously borrows or solicits, obtains, or
12 receives money for a bank not in good faith.

13 (3) Makes or permits to be made a false entry in a record of a bank, or conceals
14 or permits to be concealed, by any means or manner, the true and correct
15 entries in a record of a bank.

16 (4) Knowingly makes an extension of credit, or permits an extension of credit,
17 by a bank to any insolvent person or to a person who has ceased to exist, or
18 that never had any existence, or upon collateral consisting of stocks or bonds
19 of an insolvent or nonexistent person.

20 (5) Makes or publishes, or knowingly permits to be made or published, a false
21 report, statement, or certificate as to the true financial condition of a bank.

22 (b) If an offense committed under this section involves money, funds, credit, or
23 property with a value of one hundred thousand dollars (\$100,000) or more, it is a Class C
24 felony. If an offense committed under this section involves money, funds, credit, or property
25 with a value of less than one hundred thousand dollars (\$100,000), it is a Class H felony.

26 **"§ 53C-8-12. Enforcement of the banking laws.**

27 (a) When the Commissioner believes that a violation of the banking laws has occurred
28 or is continuing, the Commissioner may order an examination or investigation of the facts and
29 circumstances relating to the suspected violation.

30 (b) Every bank failing to make and transmit any report that the Commissioner is
31 authorized to require by this Chapter, and in and according to the form prescribed by the
32 Commissioner, within 10 business days after the receipt of a request or requisition therefor, or
33 within the extension of time granted by the Commissioner, shall be notified by the
34 Commissioner, and if the failure continues for five business days after the receipt of the notice,
35 the delinquent bank shall be subject to a penalty of up to one thousand dollars (\$1,000). The
36 penalty provided by this section shall be recovered in a civil action in any court of competent
37 jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions.

38 (c) In addition to any other powers conferred by this Chapter, the Commissioner shall
39 have the power to do the following:

40 (1) Order any bank, trust company, or subsidiary thereof, or any director,
41 officer, or employee, or any other person the Commissioner is authorized to
42 regulate, to cease and desist violating any provision of this Chapter or any
43 lawful rule issued thereunder.

44 (2) Order any bank, trust company, or subsidiary thereof, or any director,
45 officer, or employee, or any other person the Commissioner is authorized to
46 regulate, to cease and desist from a course of conduct that is unsafe or
47 unsound and that is likely to cause insolvency or dissipation of assets or is
48 likely to jeopardize or otherwise seriously prejudice the interests of a
49 depositor.

50 (d) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and
51 opportunity for hearing shall be provided before any of the actions authorized by this section

1 shall be undertaken by the Commissioner. In cases involving extraordinary circumstances
2 requiring immediate action, the Commissioner may take such action but shall promptly afford a
3 subsequent hearing upon application to rescind the action taken.

4 (e) The Commissioner shall have the power to subpoena witnesses, compel their
5 attendance, require the production of evidence, administer oaths, and examine any person under
6 oath in connection with any subject related to a duty imposed or a power vested in the
7 Commissioner.

8 (f) The Commissioner may impose a civil money penalty of not more than one
9 thousand dollars (\$1,000) for each violation by any bank, trust company, or subsidiary thereof,
10 or any director, officer, or employee, or any other person the Commissioner is authorized to
11 regulate, of an order issued under subdivision (1) of subsection (c) of this section. The
12 Commissioner may impose a civil money penalty of not more than five hundred dollars
13 (\$500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any
14 director, officer, or employee, or any other person the Commissioner is authorized to regulate,
15 violates a cease and desist order issued under subdivision (2) of subsection (c) of this section.
16 The proceeds of civil money penalties imposed pursuant to this subsection, net of documented
17 expenses of examination and enforcement, shall be remitted to the Civil Penalty and Forfeiture
18 Fund in accordance with G.S. 115C-457.2.

19 (g) Administrative orders issued by the Commissioner and civil money penalties
20 imposed for violation of such orders shall be subject to review by the Commission, which shall
21 have power to amend, modify, or disapprove the same at any regular or special meeting.

22 (h) Notwithstanding any penalty imposed by the Commissioner, the Commission may,
23 after notice of and opportunity for hearing, impose, enter judgment for, and enforce, by
24 appropriate process, a penalty of not more than ten thousand dollars (\$10,000) against any
25 bank, trust company, or subsidiary thereof, or against any of its directors, officers, or
26 employees, or any other person the Commissioner is authorized to regulate, for violating any
27 lawful order of the Commission or Commissioner. The proceeds of civil money penalties
28 imposed pursuant to this subsection, net of documented expenses of examination and
29 enforcement, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
30 G.S. 115C-457.2.

31 (i) If the Commissioner believes that a violation of a criminal statute has occurred, the
32 Commissioner may refer the matter to the appropriate prosecutorial agency.

33 **"§ 53C-8-13. Immediate action orders.**

34 (a) In the event that the Commissioner determines that a bank has inadequate capital or
35 insufficient capital or determines that immediate action is necessary to cause a bank to conduct
36 its business in a safe and sound manner or to cause a bank or any of its directors, officers, or
37 employees to cease from an act or course of conduct that threatens, or is reasonably probable of
38 threatening, the financial integrity of the bank, the commissioner may order, as applicable, the
39 bank to take such corrective action as the Commissioner deems necessary or may order the
40 bank, director, officer, or employee to immediately cease such conduct, act, or course of
41 conduct and to refrain therefrom in the future.

42 (b) Any order made under this section shall be effective upon issuance, provided,
43 however, that the Commissioner shall promptly afford a subsequent hearing upon the order as
44 provided in G.S. 53C-2-6.

45 **"§ 53C-8-14. Supervisory control.**

46 (a) Whenever the Commissioner determines that a bank has insufficient capital and is
47 conducting its business in an unsafe or unsound manner or in any fashion that threatens the
48 financial integrity of the bank, the Commissioner may serve a notice of charges on the bank,
49 requiring it to show cause why it should not be placed under supervisory control. The notice of
50 charges shall specify the grounds for supervisory control and set the time and place for a

1 hearing. A hearing before the Commissioner shall be held no earlier than seven days and no
2 later than 15 days after issuance of the notice of charges.

3 (b) If, after the hearing provided in subsection (a) of this section, the Commissioner
4 determines that supervisory control of the bank is necessary to protect the bank's customers,
5 creditors, or the general public, the Commissioner shall issue an order taking supervisory
6 control of the bank. The board of directors of the bank in office on the date of the issuance of
7 the order may appeal the order of the Commissioner to the Commission pursuant to
8 G.S. 53C-2-6 no later than 10 days after the date of the issuance of the order.

9 (c) The Commissioner may appoint an agent to supervise and monitor the operations of
10 the bank during the period of supervisory control. During the period of supervisory control, the
11 bank shall act in accordance with any instructions and directions as may be given by the
12 Commissioner, directly or through the agent, and shall not act or fail to act except when to do
13 so would violate an outstanding order of its federal bank supervisory agent or the FDIC if the
14 FDIC is not its primary federal regulator.

15 (d) Within 180 days of the date of the order taking supervisory control, the
16 Commissioner shall issue an order approving a plan for the termination of supervisory control
17 on the 30th day following the issuance of the order. The plan may provide for the following:

18 (1) The issuance by the bank of debt instruments or shares.

19 (2) The appointment or removal of one or more officers and/or one or more
20 directors.

21 (3) The reorganization or combination of the bank.

22 (4) A control transaction with respect to the bank.

23 (5) The dissolution and liquidation of the bank.

24 (e) The reasonable costs of the Commissioner under this section shall be paid by the
25 bank. The Commissioner's determination of the costs shall be, in the absence of manifest error,
26 dispositive of the issue of reasonableness.

27 **"§ 53C-8-15. Removal of directors, officers, and employees.**

28 (a) If the Commissioner determines that a director, officer, or employee of a bank has
29 participated in or consented to any violation of this Chapter or an order of the Commissioner,
30 or has engaged in any unsafe or unsound business practice in the operation of the bank, or has
31 been dishonest, incompetent, or reckless in the management of the affairs of the bank, or has
32 persistently violated the laws of this State, or repeatedly violated or failed to comply with any
33 of the bank's organizational documents, and that as a result, a situation exists requiring prompt
34 corrective action in order to protect the bank, its customers, or the public, the Commissioner
35 may issue an order temporarily removing the director, officer, or employee pending a hearing
36 that shall occur not less 10 days after removal. The order shall state that it is a "Temporary
37 Order of Removal" and shall further state the grounds upon which it was issued together with
38 the date, time, and location of a hearing on the matter. For good cause shown, the
39 Commissioner may grant the director, officer, or employee subject to the order a 10-day
40 extension of the hearing date, but the temporary removal order shall remain in full force and
41 effect. Upon a hearing before the Commissioner within the prescribed time, the temporary
42 removal order may be dissolved or made permanent in whole or in part.

43 (b) Any removal under this section is effective in all respects as if the removal had been
44 made by the shareholders of the bank in question.

45 (c) Without the prior written approval of the Commissioner, no director, officer, or
46 employee subject to an order under this section shall be eligible to be elected, reelected, or
47 appointed any position as a director, officer, or employee of that bank or any other North
48 Carolina financial institution during the period of the order's effect.

49 (d) An individual who is the subject of an order of the Commissioner under this section
50 may appeal the order to the Commission pursuant to G.S. 53C-2-6 no later than 10 days after
51 the date of issuance of the order.

1 **"§ 53C-8-16. Emergency powers.**

2 In the event of a natural disaster or other national, regional, state, or local emergency, the
3 Commissioner may temporarily waive or suspend requirements for compliance by one or more
4 banks with any provisions of this Chapter.

5 **"§ 53C-8-17. Interstate regulatory agreements.**

6 The Commissioner may enter into cooperative, coordinating, and information sharing
7 agreements with (i) any bank supervisory agency having jurisdiction over an out-of-state bank
8 that operates one or more branches in this State and (ii) any bank supervisory agency of another
9 state in which a bank operates one or more branches with respect to the periodic examination or
10 other supervision of the branches of the out-of-state bank operating in this State or the branches
11 of the bank operating in such other state.

12 "Article 9.

13 "Supervisory Liquidation; Voluntary Dissolution and Liquidation.

14 "Part 1. General Provisions.

15 **"§ 53C-9-101. Supervisory combinations.**

16 Notwithstanding any other provision of this Chapter, in order to protect the public,
17 including depositors and creditors of a bank, the Commissioner, upon making a finding that a
18 bank is unable to operate in a safe and sound manner and is not reasonably likely to be able to
19 resume safe and sound operations, may authorize or require a combination of the bank, a
20 control transaction, or any other transaction, whether or not the Commissioner has taken
21 supervisory control pursuant to G.S. 53C-8-14. In ordering any such combination, control
22 transaction, or other transaction, the Commissioner may order that a vote of the bank's
23 shareholders shall not be required to effect the combination, control transaction, or other
24 transactions.

25 **"§ 53C-9-102. Distributions; assignments restricted.**

26 A bank that is in the process of involuntary or voluntary dissolution pursuant to this Article
27 may not make or pay distributions to its shareholders unless the bank has the prior written
28 approval of the Commissioner. No bank shall make any general assignment for the benefit of
29 its creditors except by surrendering possession of its assets to the Commissioner for dissolution
30 and liquidation pursuant to G.S. 53-9-301, and any other purported assignment by the bank for
31 the benefit of its creditors shall be void.

32 **"§ 53C-9-103. Cancellation of charter.**

33 Whenever a combination, dissolution, or other transaction occurs by which a bank ceases to
34 exist or ceases to be eligible for a charter, the Commissioner shall by order cancel the bank's
35 charter and shall publish the order in accordance with G.S. 53-1-4(59). A copy of the order
36 shall be filed by the Commissioner with the Secretary of State. The bank shall continue to exist
37 under Chapter 55 of the General Statutes for the purpose of dissolving and liquidating its
38 business and affairs.

39 "Part 2. Voluntary Dissolution and Liquidation.

40 **"§ 53C-9-201. Voluntary dissolution prior to receipt of charter.**

41 A bank in formation may, prior to issuance of its charter, give notice to the Commissioner
42 and, with the Commissioner's consent, abandon its application to the Commissioner and
43 dissolve and liquidate by a majority vote of its board of directors and as provided under
44 Chapter 55 of the General Statutes.

45 **"§ 53C-9-202. Voluntary dissolution.**

46 (a) With the approval of the Commissioner, a bank may engage in a voluntary
47 dissolution and liquidation.

48 (b) If, by a majority vote, the board of directors of a bank should determine that in their
49 judgment the bank should be dissolved and liquidated, then the board of directors shall submit
50 immediately to the Commissioner the following documents, certified by an appropriate officer
51 of the bank:

- 1 (1) The board of directors' resolution.
- 2 (2) The bank's proposed articles of dissolution.
- 3 (3) The board of directors' plan for liquidation.
- 4 (4) Any notices or proxy solicitation materials proposed to be sent to
- 5 shareholders.

6 (c) The Commissioner shall examine the documents submitted under subsection (b) of
7 this section and such other matters as the Commissioner deems relevant and may issue an order
8 authorizing the bank and its board of directors to proceed with dissolution and liquidation as
9 provided in G.S. 53C-9-203. Examination by the Commissioner of the materials referred to in
10 subsection (b)(4) of this section shall not be deemed to be approval of the documents for any
11 purpose.

12 (d) At any annual or special meeting of shareholders called for the purpose of voting
13 upon a proposal for voluntary dissolution of a bank, the shareholders of the bank may, by an
14 affirmative vote, in person or by proxy, of the holders of shares representing at least two-thirds
15 of the votes entitled to be cast on such matters, resolve to dissolve and liquidate the bank in
16 accordance with the order of the Commissioner issued under subsection (c) of this section.

17 (e) If a majority of the board of directors of a bank should determine that in its best
18 judgment the bank should be dissolved and liquidated but deems it impractical or otherwise
19 inadvisable to proceed with a vote upon voluntary dissolution by the shareholders, then the
20 board of directors shall immediately forward a certified copy of its resolution to the
21 Commissioner and the Commissioner shall place the bank in receivership pursuant to
22 G.S. 53C-9-301.

23 **"§ 53C-9-203. Voluntary dissolution and liquidation procedure.**

24 (a) At the appropriate time, the Commissioner shall do the following:

- 25 (1) Inform the FDIC and the bank's federal supervisory agency if other than the
- 26 FDIC.
- 27 (2) Select and appoint a receiver or receiver in liquidation, just as if the
- 28 liquidation were involuntary under G.S. 53C-9-301.
- 29 (3) Attach a certificate of approval to the articles of dissolution, and the bank
- 30 shall then file the certified articles with the Secretary of State.

31 (b) Upon the filing of the articles of dissolution with the Secretary of State, it shall be
32 unlawful for the bank to accept any additional deposit accounts or additions to deposit accounts
33 or make any additional extensions of credit, but all its income and receipts in excess of actual
34 expenses of liquidation of the bank shall be applied to the discharge of its liabilities.

35 (c) The persons charged with liquidation of the bank in the approved plan of dissolution
36 shall cause to be published a public notice stating the bank has closed and will dissolve and
37 liquidate and notifying its depositors and creditors to present their claims for payment,
38 specifying the method for doing so.

39 (d) The bank may pay reasonable compensation, subject to the approval of the
40 Commissioner, to the persons charged with its liquidation.

41 (e) Any bank in the process of voluntary dissolution and liquidation shall be subject to
42 examination by the Commissioner and shall furnish any reports required by the Commissioner.

43 (f) If the Commissioner determines at any time that the voluntary liquidation plan is not
44 working, the Commissioner may place the bank in receivership pursuant to G.S. 53C-9-301.

45 "Part 3. Receivership; Involuntary Dissolution.

46 **"§ 53C-9-301. Receivership.**

47 (a) The Commissioner may take custody of the books, records, and assets of every kind
48 and character of any bank in the instances established in Part 2 of this Article or if it reasonably
49 appears from one or more examinations made by the Commissioner that any of the following
50 conditions exist:

- 1 (1) The directors or officers of the bank, or the liquidators of the bank subject to
2 a voluntary plan of liquidation, have neglected, failed, or refused to take
3 action that the Commissioner deems necessary for the protection of the bank.
4 (2) The directors, officers, or liquidators of the bank have impeded or obstructed
5 an examination.
6 (3) The business of the bank is being conducted in a fraudulent, illegal, or
7 unsafe manner.
8 (4) The bank is in an unsafe or unsound condition to transact business and it is
9 not reasonably probable that it will be able to return to a safe and sound
10 condition.
11 (5) The capital of the bank is impaired such that the likely realizable value of its
12 assets is insufficient to pay and satisfy the claims of all depositors and all
13 creditors.
14 (6) The directors or officers of the bank, or the liquidators of a bank subject to a
15 voluntary plan of liquidation, have assumed duties or performed acts in
16 excess of those authorized by applicable statutes or regulations, by the bank's
17 organizational documents or plan of liquidation, or without supplying the
18 required bond.
19 (7) The bank is insolvent or is in imminent danger of insolvency or has
20 suspended its ordinary business transactions due to insufficient funds.
21 (8) The bank is unable to continue operations.

22 (b) Unless the Commissioner reasonably finds that an emergency exists that requires
23 that the Commissioner take custody immediately, the Commissioner shall first give written
24 notice to the board of directors of the bank specifying which of those circumstances listed in
25 subdivisions (1) through (8) of subsection (a) have been determined to exist and shall allow a
26 reasonable time in which corrections may be made before a receiver of the bank will be
27 appointed as outlined in subsections (c) and (d) of this section. For these purposes, "written
28 notice" shall be deemed to include any report of examination or other confidential or
29 nonconfidential written communication that is either directly from the Commissioner or is
30 joined in by the Commissioner.

31 (c) The Commissioner shall appoint as receiver or coreceivers one or more qualified
32 persons for the purpose of receivership and liquidation of the bank of which the Commissioner
33 has taken custody under subsection (a) of this section, which receiver shall furnish a bond in
34 such form and amount, and with such surety, as the Commissioner may require.

35 (d) The Commissioner may appoint the FDIC or its nominee as the receiver, and the
36 receiver shall be permitted to serve without posting bond. In the event of such an appointment,
37 the Commissioner shall thereafter be forever relieved of any and all responsibility and liability
38 in respect to the receivership and the liquidation of the bank.

39 (e) In the event the Commissioner takes custody of a bank and then appoints a receiver
40 for the bank, the Commissioner shall serve personally at the bank's principal office through the
41 officer who is present and appears to be in charge, the Commissioner's order taking possession
42 and, if applicable, the Commissioner's order appointing a receiver for the bank in liquidation.
43 The Commissioner shall also mail a certified copy of the order taking possession and the
44 appointing order by certified mail or by express delivery to any previous receiver or other legal
45 custodian of the bank and to the Clerk of Superior Court of Wake County. The Commissioner
46 shall give notice to the public of the Commissioner's actions by posting a notice summarizing
47 the Commissioner's actions near the entrance to each branch of the bank, and the Commissioner
48 shall issue a similar public notice as defined in G.S. 53C-1-4(59).

49 (f) Whenever a receiver for a bank is duly appointed and qualified under subsection (c)
50 or (d) of this section:

- 1 (1) The receiver, by operation of law and without any conveyance or other
2 instrument, act, or deed, shall succeed to all the rights, titles, powers, and
3 privileges of the bank, its shareholders, officers, and directors, or any of
4 them, and to the titles to the books, records, and assets of every description
5 of any previous receiver or other legal custodian of the bank. Neither the
6 shareholders, officers, or directors, nor any of them, shall thereafter, except
7 as expressly provided in this section, have or exercise any rights, powers, or
8 privileges or act in connection with any assets or property of any nature of
9 the bank in receivership.
- 10 (2) The Commissioner may, at any time, direct the receiver (unless it is the
11 FDIC) to return the bank to its previous or a newly constituted management
12 and its shareholders.
- 13 (3) A receiver, other than the FDIC, may, at any time during the receivership
14 and before final liquidation, be removed and a replacement appointed by the
15 Commissioner.
- 16 (g) A receiver may perform any of the following acts:
- 17 (1) Demand, sue for, collect, receive, and take into possession all the goods and
18 chattels, rights and credits, moneys and effects, lands and tenements, books,
19 papers, choses in action, bills, instruments, notes, intangible interests, and
20 property of every description of the bank.
- 21 (2) Foreclose mortgages, deeds of trust, and other liens granted to the bank to
22 the extent the bank would have the right to do so.
- 23 (3) Seek injunctions and institute suits for the recovery of any property,
24 damages, or demands existing in favor of the bank, and shall, upon the
25 receiver's own application, be substituted as party plaintiff in the place of the
26 bank in any suit or proceeding pending at the time of the receiver's
27 appointment.
- 28 (4) Sell, convey, and assign any or all of the property rights and interests owned
29 by the bank.
- 30 (5) Appoint agents and engage independent contractors.
- 31 (6) Examine papers and investigate persons.
- 32 (7) Make and carry out agreements with the FDIC for the payment or
33 assumption of the bank's liabilities, in whole or in part, and to sell, convey,
34 transfer, pledge, or assign assets as security or otherwise and to make
35 guarantees in connection therewith.
- 36 (8) Perform all other acts that might be done by the employees, officers, and
37 directors of the bank.

38 These powers shall be continued in effect until liquidation of the bank or until return of the
39 bank to its prior or newly constituted management.

40 (h) The Commissioner may, unless the FDIC has been appointed as receiver, determine
41 that the receivership proceedings of a bank should be discontinued and the possession of the
42 bank returned to newly constituted management. The Commissioner shall then remove the
43 receiver and restore all the rights, powers, and privileges of the bank's depositors, shareholders,
44 customers, employees, officers, and directors. The return of a bank to a newly constituted
45 management from the possession of a receiver shall, by operation of law and without any
46 conveyance or other instrument, act, or deed, vest in the bank the title to all property held by
47 the receiver in the capacity as receiver for the bank.

48 (i) Claims against a bank in receivership shall have the following order of priority for
49 payment:

1 (1) Costs, expenses, and debts of the bank incurred on or after the date of the
2 appointment of the receiver, including compensation for the receiver and a
3 reasonable sum for the time of employees and agents of the OCOB.

4 (2) Claims of holders of deposit accounts.

5 (3) Claims of secured creditors in such order of priority as is established by
6 applicable law or regulation.

7 (4) Claims of general creditors.

8 (5) Claims of holders of the bank's shares in the order of preference established
9 by the bank's organizational documents.

10 (j) All claims of each class described within subsection (i) of this section shall be paid
11 in full so long as sufficient assets are available therefor. Members of a class for which the
12 receiver cannot make payment in full shall be paid an amount proportionate to their total
13 claims.

14 (k) The Commissioner may direct the receiver to make payment of claims for which no
15 provision is made in this section and may direct the payment of less than all claims within a
16 class.

17 (l) When all assets of the bank have been fully liquidated, all claims and expenses have
18 been paid or settled, and the receiver has recommended a final distribution, the dissolution of
19 the bank in receivership shall be accomplished in the following manner:

20 (1) The receiver shall file with the Commissioner a detailed report, in a form to
21 be prescribed by the Commissioner, of the receiver's acts and proposed final
22 distribution of the bank's assets.

23 (2) Upon the Commissioner's approval of the final report of the receiver, the
24 receiver shall make the final distribution of the bank's assets in any manner
25 as the Commissioner may direct.

26 (3) When any unclaimed property, including funds due to a known but
27 unlocated depositor, remains following the final distribution of the bank's
28 assets, such property shall be promptly transferred to the State Treasurer to
29 hold in accordance with the provisions of Chapter 115B of the General
30 Statutes.

31 (4) Upon completion of the actions described in this subsection, the process of
32 dissolution and liquidation of the bank shall be deemed complete, and the
33 Commissioner shall issue a certification of completed liquidation to the
34 Secretary of State.

35 (5) Upon completion of the process of dissolution and liquidation, the
36 Commissioner shall cause an examination of the receiver's activities and
37 records to be conducted, with which the receiver shall assist. The accounts of
38 the receiver shall then be ruled upon by the Commissioner, and if approved,
39 the receiver shall be given a final and complete discharge and release.

40 "Part 4. Provisions Relating to Any Dissolution or Receivership.

41 **"§ 53C-9-401. Statute relating to receivers applicable to insolvent banks.**

42 The provisions of G.S. 1-507.1 through 1-507.11, relating to receivers, when not
43 inconsistent with the provisions of this Article, shall apply to the liquidation of banks under this
44 Article.

45 **"§ 53C-9-402. Storage and destruction of records.**

46 (a) Any record of a bank that is in or has completed the process of dissolution and
47 liquidation may be kept in compliance with the provisions of G.S. 53C-6-14.

48 (b) All records of a bank that has completed the process of dissolution and liquidation
49 shall be held in such place as in the Commissioner's judgment will provide for their proper
50 safekeeping and protection.

1 (c) After the expiration of five years from the date of filing of the certificate of
2 completed liquidation under G.S. 53C-9-301, the records of the liquidated bank may be
3 destroyed by the Commissioner using commercially reasonable record destruction procedures.

4 (d) Nothing in this section shall be construed to authorize the destruction by the
5 Commissioner of any of the records of the OCOB made by it with reference to the dissolution,
6 receivership, or liquidation of any bank.

7 **"§ 53C-9-403. Authority to serve as trustee terminated.**

8 Whenever any bank that has been, or shall be, appointed trustee in any indenture, deed of
9 trust, or other instrument of like character, executed to secure the payment of any bonds, notes,
10 or other evidences of indebtedness, has been or shall be placed in receivership, the powers and
11 duties of the bank as trustee in any such instrument shall, upon the entry of an order of the clerk
12 of superior court having jurisdiction under G.S. 53C-9-405 appointing a successor trustee, upon
13 a petition as described in this Part, immediately cease.

14 **"§ 53C-9-404. Petition for new trustee; upon parties interested.**

15 In all cases of dissolution receivership and liquidation under this Article, the clerk of
16 superior court of any county in which an indenture, deed of trust, or other instrument of like
17 character is recorded shall, upon the verified petition of any person interested in any such trust,
18 either as trustee, beneficiary, or otherwise, which interest shall be set out in the petition, enter
19 an order directing service, in the manner required by law for service of summons, on all
20 interested parties of a notice requiring all persons having any interest in the trust to appear at
21 the clerk's office on a day designated in the order and notice, not less than 30 days from the
22 date of the first publication of the notice, and show cause why a new trustee shall not be
23 appointed. The notice shall set forth the names of the parties to the indenture, deed of trust, or
24 other such instrument, and the date the documents were executed and the place of recording.

25 **"§ 53C-9-405. Appointment of substitute trustee where no objection made.**

26 If, upon the day fixed in the notice, no person appears and objects to the appointment of a
27 substitute trustee, the clerk of superior court shall, upon such terms as he or she deems
28 advisable to the best interest of all parties, appoint a competent person authorized to act as
29 substitute trustee, who shall be vested with and shall exercise all the powers conferred upon the
30 trustee named in the instrument.

31 **"§ 53C-9-406. Hearing where objection made; appeal from order.**

32 If objection is made to the appointment of a new trustee under this Part, the clerk shall hear
33 and determine the matter, and from his or her decision an appeal may be prosecuted as in cases
34 of special proceedings generally.

35 **"§ 53C-9-407. Registration of final order.**

36 The final order of appointment of a new trustee or trustees under this Part shall be certified
37 by the clerk of superior court issuing the order and shall be recorded in the office of the register
38 of deeds in the county or counties in which the instrument under which the appointment has
39 been made is recorded.

40 **"§ 53C-9-408. Petition and order applicable to all instruments involved.**

41 The petition and the order appointing a new trustee or trustees under this Part may apply to
42 any number of indentures, deeds of trust, or other instruments, wherein the same trustee or
43 trustees are named.

44 **"§ 53C-9-409. Additional remedy.**

45 The appointment of a substitute trustee as described in this Part shall be in addition to and
46 not substitution for any other remedy provided by law.

47 "Article 10.

48 "Bank Holding Companies.

49 "Part 1. Change in Control.

50 **"§ 53C-10-101. Holdings companies.**

1 Every holding company, as defined in G.S. 53C-1-4(39), of a bank shall register with the
2 Commissioner and maintain that registration on an annual basis in the form prescribed by the
3 Commissioner.

4 **"§ 53C-10-102. Holding company control transaction.**

5 (a) Except as otherwise expressly permitted by this section, a person shall not engage in
6 a control transaction to which a holding company formed under the laws of this State and
7 having a bank as a subsidiary is a party without the prior approval of the Commissioner. A
8 person may contract to engage in a control transaction with the consummation of the control
9 transaction being subject to receipt of the approval of the Commissioner.

10 (b) The Commissioner may require a person who is obligated to file a notice or an
11 application under this section to appoint an agent resident in this State for service of process
12 upon the filing of the notice or application or as a condition to the acceptance of the notice or
13 application for review. An application for approval shall be in a form required by the
14 Commissioner and shall be accompanied by such fee as may be required by rule.

15 (c) The following transactions shall not constitute a control transaction under this
16 section requiring the prior approval of the Commissioner:

17 (1) The acquisition of control over voting securities by a person who has
18 previously engaged in a control transaction with respect to the holding
19 company after receiving the approval of the Commissioner under this
20 Article, which approval permits the acquisition of control over additional
21 voting securities, or any person who is an affiliate of the person previously
22 engaging in the approved control transaction with such permission and who
23 is identified in the application submitted for the approval, if the acquiring
24 person files a notice with the Commissioner, in the form required by the
25 Commissioner, describing the transaction at least 10 days before the
26 acquiring person or affiliate thereof first votes or directs the voting of the
27 voting securities.

28 (2) An acquisition of control over voting securities by operation of law, will, or
29 intestate succession, if the acquiring person files a notice with the
30 Commissioner, in the form required by the Commissioner, describing the
31 acquisition or transfer at least 10 days before the acquiring person first votes
32 or directs the voting of the voting securities.

33 (3) Bona fide gifts.

34 (4) A transaction exempted by rules, orders, or declaratory rulings of the
35 Commissioner, issued because approval of the transaction is not necessary to
36 achieve the objectives of this Chapter.

37 (5) An acquisition of control over voting shares exempt from the prior approval
38 requirements set forth in section 3 of the Bank Holding Company Act, as
39 amended (12 U.S.C. § 1842), pursuant to the exceptions described in items
40 (A), (B) or (C) of that section.

41 (d) Upon receipt of a notice described in subsection (c) of this section, the
42 Commissioner may, before the 10th day following the receipt, notify the acquiring person of
43 the Commissioner's objection to the exercise of control over the voting securities or may
44 require the acquiring party to submit further information before exercising control over the
45 voting securities. An acquiring person receiving a notice of objection shall be required to
46 submit an application for approval of a control transaction. An acquiring person receiving a
47 notice to submit further information may be required to provide any information that would be
48 included in an application for approval of a control transaction. In the event such an acquiring
49 person is comprised of a group of persons, the Commissioner may require each member of the
50 group to submit relevant information.

1 (e) All voting securities over which control has been acquired by an acquiring person
2 shall not be voted on any matter submitted to a vote of the holders of the outstanding voting
3 securities of the holding company of a bank and shall be deemed authorized but unissued for
4 purposes of determining the presence of a quorum of holders of voting securities until such
5 time as follows:

6 (1) The Commissioner has approved an application for approval of a control
7 transaction with respect to the voting securities.

8 (2) The transaction is one listed in subsection (c) of this section that does not
9 require the filing of a notice with the Commissioner.

10 (3) The transaction is one listed in subsection (c) of this section that requires a
11 notice to be filed with the Commissioner and the Commissioner has not
12 issued an objection to the notice and any requirement of the Commissioner
13 for the filing of further information had been determined by the
14 Commissioner to have been satisfied.

15 **"§ 53C-10-103. Application regarding a control transaction.**

16 (a) A person seeking approval of a control transaction to which a holding company of a
17 bank is a party under this Article shall file the following with the Commissioner:

18 (1) An application in the form prescribed by the Commissioner.

19 (2) All filing fees required by rule of the Commissioner.

20 (3) Any other information required by a rule of the Commissioner or deemed by
21 the Commissioner to achieve the objectives of this Chapter.

22 (b) In the event a person submitting an application is a group of persons, the
23 Commissioner may require each member of the group to submit information relevant to the
24 application.

25 (c) Notwithstanding any laws to the contrary, information about the character,
26 competence, or experience of an acquiring person or its proposed management personnel or
27 affiliates shall be deemed a confidential record of the Commissioner subject to
28 G.S. 53C-2-7(b).

29 **"§ 53C-10-104. Public notice.**

30 A person filing an application for approval of a control transaction shall publish a public
31 notice of the filing of the application not more than 30 days before nor more than 10 days after
32 the filing of the application with the Commissioner. The public notice shall contain the
33 following:

34 (1) A statement that the application has been filed with the Commissioner.

35 (2) The name of the applicable holding company and the address of its principal
36 office.

37 (3) A statement that any interested person may make written comment on the
38 proposed control transaction and that comments received by the
39 Commissioner within 14 days of the publication of the public notice shall be
40 considered. The public notice shall provide the current mailing address of
41 the Commissioner.

42 **"§ 53C-10-105. Actions on control transaction applications.**

43 (a) The Commissioner shall examine the proposed control transaction, including the
44 character, competence, and experience of the acquiring person and its proposed management
45 personnel, to determine whether the financial stability of the holding company or the interests
46 of the customers served by one or more bank subsidiaries of the holding company would be
47 adversely affected by the proposed control transaction. Not later than the 60th day following
48 receipt of a completed application for approval of a control transaction unless extraordinary
49 circumstances require a longer period of review, the Commissioner shall approve or deny the
50 application.

1 (b) The Commissioner may deny an application for approval of a control for any of the
2 following reasons:

3 (1) The financial condition of the person seeking approval of a control
4 transaction could jeopardize the financial stability of the holding company,
5 one or more bank subsidiaries of the holding company, or the financial
6 interests of the bank's customers.

7 (2) An examination of the character, competence, or experience of any acquiring
8 person or of any of the proposed management personnel of the holding
9 company shows that it would not be in the interest of the customers of one or
10 more of the bank subsidiaries of the holding company or in the interest of the
11 public to permit the person to control the holding company.

12 (3) The plans or proposals of the person seeking approval with respect to
13 exercising control over the holding company would not be in the best
14 interests of the customers of one or more bank subsidiaries of the holding
15 company.

16 (4) Upon the effective date of the proposed control transaction, one or more of
17 the bank subsidiaries of the holding company would not be solvent, have
18 inadequate capital, or not be in compliance with this Chapter or rules of the
19 Commissioner.

20 (5) The application for approval is incomplete.

21 (6) If the acquiring person solicits votes for the approval of or consents to the
22 control transaction from the holders of the voting securities of the holding
23 company, adequate and complete disclosures of all material information
24 about the proposed control transaction, together with a prominent statement
25 that neither the control transaction nor any solicitation of such holders' votes
26 or consents has been approved by the Commissioner and that any
27 representation to the contrary is a criminal offense, have not been made to
28 the holders.

29 (c) If an application filed under this Part is approved by the Commissioner, the control
30 transaction may become effective. All conditions to approval set forth in the order of the
31 Commissioner shall be enforceable against the person, and each member of a group of persons,
32 receiving the approval.

33 **"§ 53C-10-106. Appeal.**

34 Any order of the Commissioner denying an application for approval of a control transaction
35 may be appealed to the Commission by the person filing the application denied, as provided in
36 G.S. 53C-2-6.

37 "Part 2. Combinations.

38 **"§ 53C-10-201. Combination authority.**

39 With the approval of the Commissioner, a holding company of a bank may combine with
40 one or more other holding companies or other companies. The application for approval shall be
41 in the form required by the Commissioner and shall be accompanied by such fee as may be
42 required by rule.

43 **"§ 53C-10-202. Combination application and investigation.**

44 (a) A holding company of a bank seeking approval of a combination shall file with the
45 Commissioner an application for approval, copies of the agreement under which the holding
46 company proposes to effect the combination, and any additional information that the
47 Commissioner shall require by rule or as is required by the Commissioner in connection with
48 the application in order to achieve the objectives of this Chapter.

49 (b) A holding company filing an application for approval of a combination shall publish
50 a public notice of the filing of the application not more than 30 days before nor more than 10

1 days after the filing of the application with the Commissioner. The public notice shall contain
2 the following:

- 3 (1) A statement that the application has been filed with the Commissioner.
- 4 (2) The names of the parties to the proposed combination and the addresses of
5 its principal offices.
- 6 (3) A statement that any interested person may make written comment on the
7 proposed combination and that comments received by the Commissioner
8 within 14 days of the publication of the public notice shall be considered.
9 The public notice shall provide the current mailing address of the
10 Commissioner.

11 (c) The Commissioner shall examine the proposed combination, including the
12 character, competency, and experience of the proposed directors and executive officers of the
13 surviving party of the combination, to determine whether the interests of the customers and
14 communities served by the banks controlled by the parties to the combination would be
15 adversely affected by the proposed combination.

16 (d) Notwithstanding any laws to the contrary, information about the character,
17 competence, and experience of the directors and executive officers of the parties to a
18 combination received by the Commissioner shall be deemed a confidential record of the
19 Commissioner subject to G.S. 53C-2-7(b).

20 **"§ 53C-10-203. Decision on application.**

21 Based on the application and the Commissioner's examination, the Commissioner shall
22 enter an order approving or denying approval of the proposed combination not later than the
23 60th day following the date the Commissioner notifies the parties that the application is
24 complete, unless extraordinary circumstances require a longer period of review.

25 **"§ 53C-10-204. Appeal.**

26 Any order of the Commissioner denying an application for approval of a combination may
27 be appealed to the Commission by a party to the combination, as provided in G.S. 53C-2-6.

28 "Part 3. General Authority.

29 **"§ 53C-10-301. Cease and desist order.**

30 Upon a finding that any action of a holding company subject to this Article may be in
31 violation of any banking laws, the Commissioner, after a reasonable notice to the holding
32 company and an opportunity for it to be heard, shall have the authority to order it to cease and
33 desist from such action. If the holding company fails to appeal the decision within 10 days of
34 the date of the issuance of the order in accordance with G.S. 53C-2-6, and continues to engage
35 in the action in violation of the Commissioner's order to cease and desist such action, it shall be
36 subject to a civil money penalty of twenty thousand dollars (\$20,000) for each day it remains in
37 violation of the order. The penalty provision of this section shall be in addition to and not in
38 lieu of any other provision of law applicable to a holding company's failure to comply with an
39 order of the Commissioner. The clear proceeds of the civil money penalty shall be remitted to
40 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

41 **"§ 53C-10-302. Other control changes.**

42 Each holding company of a bank shall report to the Commissioner any changes in its
43 directors, president, chief executive officer, or chief financial officer by the close of the second
44 day on which the holding company is open for business following the change."

45 **SECTION 5.** G.S. 1-339.1(a) reads as rewritten:

46 "(a) A judicial sale is a sale of property made pursuant to an order of a judge or clerk in
47 an action or proceeding in the superior or district court, including a sale pursuant to an order
48 made in an action in court to foreclose a mortgage or deed of trust, but is not

49 ...

- 50 (7) A sale made in the course of liquidation of a bank pursuant to ~~G.S. 53-20,~~
51 Article 9 of Chapter 53C of the General Statutes, or

...."

SECTION 6. G.S. 24-1.1A(d) reads as rewritten:

"(d) The loans or investments regulated by ~~G.S. 53-45~~ G.S. 53C-5-3 shall not be subject to the provisions of this section."

SECTION 7. G.S. 25-4-405(c) reads as rewritten:

"(c) A transaction, although subject to this Article, is also subject to G.S. 41-2.1, ~~53-146.1~~, 53C-6-6, 54-109.58, and 54B-129, and in case of conflict between the provisions of this section and either of those sections, the provisions of those sections control."

SECTION 8. G.S. 36C-1-102 reads as rewritten:

"§ 36C-1-102. Scope.

This Chapter applies to any express trust, private or charitable, with additions to the trust, wherever and however created. The term "express trust" includes both testamentary and inter vivos trusts, regardless of whether the trustee is required to account to the clerk of superior court. This Chapter also applies to any trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. This Chapter does not apply to constructive trusts, resulting trusts, conservatorships, estates, ~~trust~~ Payable on Death accounts as defined in ~~G.S. 53-146.2~~, G.S. 53C-6-7, 54-109.57, 54B-130, and 54C-166, trust funds subject to G.S. 90-210.61, custodial arrangements under Chapter 33A of the General Statutes and Chapter 33B of the General Statutes, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another."

SECTION 9. G.S. 53-163.1(b) reads as rewritten:

"(b) Funds held in a fiduciary capacity by a depository institution, awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be deposited in the commercial or savings or other department of the depository institution, provided that it shall first set aside under control of the trust department as collateral security, the classes of securities listed in G.S. 159-30(c) as being eligible for the investment of funds by local governments and public authorities equal in market value of such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five percent (125%) of the funds so deposited.

The securities so deposited or securities substituted therefor as collateral in the trust department by the commercial or savings or other department (as well as the deposit of cash in the commercial or savings or other department by the trust department) shall be held pursuant to the provisions of ~~G.S. 53-43(6)~~ G.S. 53-163.3.

If such funds are deposited in a depository institution insured under the provisions of the Federal Deposit Insurance Act, the above collateral security will be required only for that portion of uninvested balances of each trust which are not fully insured under the provisions of that act."

SECTION 10. Article 14 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ 53-163.3. Fiduciary funds awaiting investment.

A bank that is a trust institution may maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure all such deposits in the name of the trust department, whether in consolidated deposits or for separate fiduciary accounts, by segregating and delivering to the trust department such securities as are required by G.S. 53-163.1 for such deposits. Such securities shall be held by the trust department as security for the full payment or repayment of all such deposits and shall be kept separate and apart from other assets of the trust department. Until all of the deposits shall have been accounted for to the trust department or to the individual

1 fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When
2 fiduciary funds are deposited by the trust department in the commercial department of the bank,
3 the deposit thereof shall not be deemed to constitute a use of such funds in the general business
4 of the bank. To the extent and in the amount such deposits may be insured by the FDIC, the
5 amount of security required for such deposits by this section may be reduced. The Banking
6 Commission shall have power to make such rules as it may deem necessary for the enforcement
7 of the provisions of this section."

8 **SECTION 11.** G.S. 53-167 reads as rewritten:

9 **"§ 53-167. Expenses of supervision.**

10 Each licensee, for For the purpose of defraying necessary expenses of the Commissioner of
11 Banks and his agents in supervising them, Office of Commissioner of Banks for supervision,
12 each licensee shall pay to the Commissioner of Banks the fees prescribed in G.S. 53-122 at the
13 times therein specified; an assessment not to exceed eighteen dollars (\$18.00) per one hundred
14 thousand dollars (\$100,000) of assets, or fraction thereof, plus a fee of three hundred dollars
15 (\$300.00) per office; provided, however, a consumer finance licensee shall pay a minimum
16 annual assessment of not less than five hundred dollars (\$500.00). The assessment shall be
17 determined on a consumer finance licensee's total assets as shown on its report of condition
18 made to the Commissioner as of December 31 of each year, or the date most nearly
19 approximating that date. If the Commissioner determines that the financial condition or manner
20 of operation of a consumer finance licensee warrants further examination or an increased level
21 of supervision, the licensee may be subject to assessment not to exceed the amount determined
22 in accordance with the schedule set forth in this section."

23 **SECTION 12.** G.S. 53-184(a) reads as rewritten:

24 "(a) Each licensee shall maintain all books and records relating to loans made under this
25 Article required by the Commissioner of Banks to be kept, and the Commissioner, his deputy,
26 or duly authorized examiner or agent or employee is authorized and empowered to examine
27 such records at any reasonable time. Such books and records may be maintained in the form of
28 magnetic tape, magnetic disk, optical disk, or other form of computer, electronic or microfilm
29 media available for examination on the basis of computer printed reproduction, video display or
30 other medium acceptable to the Commissioner of Banks; provided, however, that such books
31 and records so kept must be convertible into clearly legible tangible documents within a
32 reasonable time. Any licensee having more than one licensed office may maintain such books
33 and records at a location other than the licensed office location if such location is approved by
34 the Commissioner; provided that, upon such requirements as may be imposed by the
35 Commissioner of Banks, there shall be available to the borrower at each licensed location or
36 such other location convenient to the borrower, as designated by the licensee, complete loan
37 information; and provided further that such books and records of each licensed office shall be
38 clearly segregated. When a licensee maintains its books and records outside of North Carolina,
39 the licensee shall make them available for examination at the place where they are maintained
40 and shall pay for all reasonable and necessary expenses incurred by the Commissioner in
41 conducting such examination. Where the data processing for any licensee is performed by a
42 person other than the licensee, the licensee shall provide to the Commissioner of Banks a copy
43 of a binding agreement between the licensee and the data processor which allows the
44 Commissioner of Banks, his deputy, or duly authorized examiner or agent or employee to
45 examine that particular data processor's activities pertaining to the licensee to the same extent
46 as if such services were being performed by the licensee on its own premises; and,
47 notwithstanding the provisions of ~~G.S. 53-167 and 53-122~~, G.S. 53-167, when billed by the
48 Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all costs
49 and expenses incurred by the Commissioner in such examination."

50 **SECTION 13.** G.S. 53-188 reads as rewritten:

51 **"§ 53-188. Review of regulations, order or act of Commission or Commissioner.**

1 The Commission may review any rule, regulation, order or act of the Commissioner done
2 pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such
3 rule, regulation, order or act may appeal, pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6(b), to the
4 Commission for review upon giving notice in writing within 20 days after such rule, regulation,
5 order or act complained of is adopted, issued or done. Notwithstanding any other provision of
6 law to the contrary, any aggrieved party to a decision of the Commission shall be entitled to
7 petition for judicial review pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6(b)."

8 **SECTION 14.** G.S. 53-208.27(b) reads as rewritten:

9 "(b) The Banking Commission may review any rule, regulation, order, or act of the
10 Commissioner done pursuant to or with respect to the provisions of this Article. Any person
11 aggrieved by any such rule, regulation, order, or act may appeal, pursuant to ~~G.S. 53-92(d)~~,
12 G.S. 53C-2-6(b), to the Commission for review upon providing notice in writing within 20 days
13 after any rule, regulation, order, or act complained of is adopted, issued, or done.
14 Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking
15 Commission shall be entitled to petition for judicial review pursuant to ~~G.S. 53-92(d)~~,
16 G.S. 53C-2-6(b)."

17 **SECTION 15.** G.S. 53-215 reads as rewritten:

18 "**§ 53-215. Appeal of Commissioner's decision.**

19 Any aggrieved party in a proceeding under ~~G.S. 53-211~~ G.S. 53-211, 53C-10-102, or
20 ~~G.S. 53-227.1~~ 53C-10-201 may, within 20 days after final decision of the Commissioner,
21 appeal in writing any decision to the State Banking Commission. An appeal under this section
22 shall be made pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6. Notwithstanding any other provision of
23 law, any aggrieved party to a decision of the State Banking Commission shall be entitled to
24 petition for judicial review pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6."

25 **SECTION 16.** G.S. 53-217 reads as rewritten:

26 "**§ 53-217. Enforcement.**

27 The Commissioner shall have the power to enforce the provisions of this Article through an
28 action in any court of this State or any other state or in any court of the United States, as
29 provided in ~~G.S. 53-94 and G.S. 53-134~~, G.S. 53C-8-12, for the purpose of obtaining an
30 appropriate remedy for violation of any provision of this Article, ~~including such criminal~~
31 ~~penalties as are contemplated by G.S. 53-134.~~ Article. "

32 **SECTION 17.** G.S. 53-224.11(b) reads as rewritten:

33 "(b) A North Carolina State bank desiring to establish and maintain a branch in another
34 state under this section shall file an application on a form prescribed by the ~~Commissioner and~~
35 ~~pay the branch application fee prescribed by regulation pursuant to G.S. 53-122.~~
36 Commissioner. If the Commissioner finds that the applicant has the financial resources
37 sufficient to undertake the proposed expansion without adversely affecting its safety or
38 soundness and that the establishment of the proposed branch is in the public interest, the
39 Commissioner may approve the application. In acting on the application, the Commissioner
40 shall consider the views of the appropriate bank supervisory agencies. The applicant bank may
41 establish the branch when it has received the written approval of the Commissioner."

42 **SECTION 18.** G.S. 53-224.18 reads as rewritten:

43 "**§ 53-224.18. Authority of State banks to establish interstate branches by merger.**

44 With the prior approval of the Commissioner, a North Carolina State bank may establish,
45 maintain, and operate one or more branches in a state other than North Carolina pursuant to an
46 interstate merger transaction in which the North Carolina State bank is the resulting bank. Not
47 later than the date on which the required application for the interstate merger transaction is filed
48 with the responsible federal bank supervisory agency, the applicant North Carolina State bank
49 shall file an application on a form prescribed by the ~~Commissioner and pay the fee prescribed~~
50 ~~by regulation pursuant to G.S. 53-122.~~ Commissioner. The applicant shall also comply with the
51 applicable provisions of ~~G.S. 53-12~~, Part 2 of Article 7 of Chapter 53C of the General Statutes.

1 If the Commissioner finds that (i) the proposed transaction will not be detrimental to the safety
2 and soundness of the applicant or the resulting bank, (ii) any new officers and directors of the
3 resulting bank are qualified by character, experience, and financial responsibility to direct and
4 manage the resulting bank, and (iii) the proposed merger is consistent with the convenience and
5 needs of the communities to be served by the resulting bank in this State and is otherwise in the
6 public interest, it shall approve the interstate merger transaction and the operation of branches
7 outside of North Carolina by the North Carolina State bank. Such an interstate merger
8 transaction may be consummated only after the applicant has received the Commissioner's
9 written approval."

10 **SECTION 19.** G.S. 53-224.20 reads as rewritten:

11 **"§ 53-224.20. Notice and filing requirements.**

12 Any out-of-state bank that will be the resulting bank pursuant to an interstate merger
13 transaction involving a North Carolina bank shall notify the Commissioner of the proposed
14 merger not later than the date on which it files an application for an interstate merger
15 transaction with the responsible federal bank supervisory agency, and shall submit a copy of
16 that application to the Commissioner and pay the filing fee required by the Commissioner. All
17 banks which are parties to such interstate merger transaction involving a North Carolina State
18 bank shall comply with ~~G.S. 53-12~~ Part 2 of Article 7 of Chapter 53C of the General Statutes
19 and with other applicable state and federal laws. Any out-of-state bank which shall be the
20 resulting bank in such an interstate merger transaction shall comply with Article 15 of Chapter
21 55 of the North Carolina General Statutes."

22 **SECTION 20.** G.S. 53-224.24(a) reads as rewritten:

23 "(a) The Commissioner may make such examinations of any branch of an out-of-state
24 state bank established under this Article and located in this State as the Commissioner may
25 deem necessary to determine whether the branch is operating in compliance with the laws of
26 this State and to ensure that the branch is being operated in a safe and sound manner. The
27 provisions of ~~G.S. 53-117~~ Article 8 of Chapter 53C of the General Statutes apply to such
28 examinations."

29 **SECTION 21.** G.S. 53-224.30 reads as rewritten:

30 **"§ 53-224.30. Appeal of Commissioner's decision.**

31 Any aggrieved party in a proceeding under this Article may, within 20 days after final
32 decision of the Commissioner, appeal, in writing, such decision to the North Carolina State
33 Banking Commission. An appeal under this section shall be made pursuant to ~~G.S. 53-92(d).~~
34 G.S. 53C-2-6. Notwithstanding any other provision of law, any aggrieved party to a decision of
35 the Commission shall be entitled to petition for judicial review pursuant to ~~G.S. 53-92(d).~~
36 G.S. 53C-2-6."

37 **SECTION 22.** G.S. 53-232.12(b) is repealed.

38 **SECTION 23.** G.S. 53-232.17 reads as rewritten:

39 **"§ 53-232.17. Appeal of Commissioner's decision.**

40 Any aggrieved party in a proceeding under this Article may, within 20 days after final
41 decision of the Commissioner, appeal such decision in writing to the Banking Commission. An
42 appeal under this section shall be made pursuant to ~~G.S. 53-92(d).~~G.S. 53C-2-6.
43 Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking
44 Commission shall be entitled to petition for judicial review pursuant to
45 ~~G.S. 53-92(d).~~G.S. 53C-2-6."

46 **SECTION 24.** G.S. 53-244.120(c) reads as rewritten:

47 "(c) The requirements of ~~G.S. 53-99(b).~~G.S. 53C-2-7 regarding the privacy or
48 confidentiality of any information or material provided under subsections (a) and (b) of this
49 section, and any privilege arising under any other federal or State law with respect to such
50 information or material, shall continue to apply to the information or material after it has been
51 disclosed to an entity described in subsection (a) or (b) of this section. Information or material

1 held by such an entity shall not be subject to disclosure under any State law governing the
2 disclosure to the public of information held by an officer or agency of the State. The entities
3 described in subsections (a) and (b) of this section may share information and material with all
4 State and federal regulatory officials with mortgage industry oversight authority without the
5 loss of privilege or the loss of confidentiality protections provided by State or federal law."

6 **SECTION 25.** G.S. 53-244.121 reads as rewritten:

7 "**§ 53-244.121. Review by Banking Commission.**

8 The Banking Commission may review any rule, regulation, order, or act of the
9 Commissioner made pursuant to or with respect to the provisions of this Article, and any
10 person aggrieved by any rule, regulation, order, or act may, pursuant to ~~G.S. 53-92(d)~~,
11 G.S. 53C-2-6, appeal to the Banking Commission for review upon giving 20 days' written
12 notice after the rule, regulation, order, or act is adopted or issued. The notice of appeal shall
13 specifically state the grounds for appeal and, in the case of an appeal from a contested case
14 proceeding before the Commissioner, shall set forth in numbered order the assignments of error
15 for review by the Banking Commission. Failure to specify the assignments of error shall
16 constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule as
17 provided by the Banking Commission shall also constitute grounds to dismiss the appeal.
18 Notwithstanding any other provision of law, any party aggrieved by a decision of the Banking
19 Commission shall be entitled to an appeal pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6."

20 **SECTION 26.** G.S. 53-252 reads as rewritten:

21 "**§ 53-252. Appeal of Commissioner's decision.**

22 The Commission may review any rule, regulation, order, or act of the Commissioner done
23 pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such
24 rule, regulation, order, or act may appeal, pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6, to the
25 Commission for review upon giving notice in writing within 20 days after such rule, regulation,
26 order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of
27 law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition
28 for judicial review pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6."

29 **SECTION 27.** G.S. 53-272 reads as rewritten:

30 "**§ 53-272. Appeals.**

31 The Banking Commission may review any rule, regulation, order, or act of the
32 Commissioner done pursuant to or with respect to the provisions of this Article. Any person
33 aggrieved by any such rule, regulation, order, or act may appeal, pursuant to ~~G.S. 53-92(d)~~,
34 G.S. 53C-2-6, to the Commission for review upon giving notice in writing within 20 days after
35 such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding
36 any other provision of law, any aggrieved party to a decision of the Banking Commission shall
37 be entitled to petition for judicial review pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6."

38 **SECTION 28.** G.S. 53-289 reads as rewritten:

39 "**§ 53-289. Commission may review rules, orders, or acts by Commissioner.**

40 The Commission may review any rule, regulation, order, or act of the Commissioner done
41 pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such
42 rule, regulation, order, or act may appeal, pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6, to the
43 Commission for review upon giving notice in writing within 20 days after such rule, regulation,
44 order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of
45 law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition
46 for judicial review pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6."

47 **SECTION 29.** G.S. 53-301(a) reads as rewritten:

48 "(a) Except as otherwise provided in this Article, or when the context clearly indicates
49 that a different meaning is intended, the following definitions shall apply throughout this
50 Article:

51 ...

(7) "Branch" has the meaning set forth in ~~G.S. 53-1(1a)~~G.S. 53C-1-4(11).

...."

SECTION 30. G.S. 53-359(b) reads as rewritten:

"(b) A merger or share exchange authorized by subsection (a) of this section, shall be governed by Article 11 of Chapter 55 of the General Statutes and ~~G.S. 53-17~~G.S. 53C-7-205. An acquisition or transfer of assets authorized by subsection (a) of this section shall be governed by Article 12 of Chapter 55 of the General Statutes and ~~G.S. 53-17~~G.S. 53C-7-205."

SECTION 31. G.S. 53-366 reads as rewritten:

"§ 53-366. Applicability of other laws to authorized trust institutions; status of State trust company.

(a) Except as otherwise provided in this Article, the following provisions of this Chapter shall apply to authorized trust institutions:

~~(1) G.S. 53-14;~~

~~(2) G.S. 53-16;~~

~~(3) G.S. 53-17;G.S. 53C-7-205.~~

~~(4) G.S. 53-68;~~

~~(5) G.S. 53-77.3;~~

~~(6) G.S. 53-85;~~

~~(7) Article 8 of this Chapter 53C of the General Statutes, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of:~~

~~a. G.S. 53-95;G.S. 53C-8-2.~~

~~b. G.S. 53-104;G.S. 53C-8-3.~~

~~c. G.S. 53-105;G.S. 53C-8-17.~~

~~d. G.S. 53-106; and~~

~~e. G.S. 53-107.1(a), (b) and (d).~~

~~(8) Article 9 of this Chapter, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of G.S. 53-119.~~

~~(9) Article 10 of this Chapter, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of G.S. 53-135, and except that G.S. 53-131 and G.S. 53-132 shall not apply to authorized trust institutions.~~

~~(10) Article 14 of this Chapter.~~

(b) Rules adopted by the Commissioner to implement those provisions of this Chapter made applicable to authorized trust institutions by subsection (a) of this section also shall apply to authorized trust institutions unless the rules are inconsistent with this Article or it clearly appears from the context that a particular provision is inapplicable to trust business or trust marketing.

(c) Activities of authorized trust institutions for clients shall not be considered the sale or issuance of checks under ~~G.S. 53-194~~, Article 16 of Chapter 53 of the General Statutes.

(d) Until the Commissioner has issued new rules governing State trust companies, State trust companies shall be governed by rules issued by the Commissioner for banks acting in a fiduciary capacity, except to the extent the rules are inconsistent with this Article or it clearly appears from the context that a particular provision is inapplicable to the business of a State trust company.

(e) Notwithstanding any other provision of this Chapter, a State trust company:

~~(1) Is a "banking entity" for purposes of G.S. 53-127;~~

- 1 (2) Is a "bank" for purposes of laws made applicable to authorized trust
2 institutions in this section and for purposes of G.S. 53-277.
- 3 (3) Is a trust company organized and doing business under the laws of the State
4 of North Carolina, a substantial part of the business of which is exercising
5 fiduciary powers similar to those permitted national banks under authority of
6 the Comptroller of the Currency, and which is subject by law to supervision
7 and examination by the Commissioner as a banking institution; and
- 8 (4) Is a financial institution similar to a bank.

9 (f) In the case of a State trust company controlled by a company that has declared itself
10 to be a "financial holding company" under 12 U.S.C. § 1843(l)(1)(C)(i), deposits held for an
11 account shall be deemed to be "trust funds" within the meaning of 12 U.S.C. § 1813(p) unless
12 all fiduciary duties with respect to the account are explicitly disclaimed. This subsection does
13 not prescribe the nature or extend the scope of any fiduciary duties; the nature and extent of any
14 fiduciary duties with respect to deposits held for accounts shall be as provided by the
15 instruments and laws applicable to those accounts.

16 (g) Subject to any limitations contained in this Article, an authorized trust institution is
17 a "trust company", a "corporate trustee", a "corporate fiduciary", and a "corporation acting in a
18 fiduciary capacity", as such and similar terms are used in the General Statutes, except where it
19 clearly appears from the context in which those terms are used that a different meaning is
20 intended."

21 **SECTION 32.** G.S. 53-368(c) is repealed.

22 **SECTION 33.** G.S. 53-385 reads as rewritten:

23 **"§ 53-385. Inventory.**

24 Within 90 days after the filing of a notice described in ~~G.S. 53-279~~, G.S. 53-379, the
25 Commissioner shall file an inventory of the assets and liabilities, not including assets and
26 liabilities held in accounts of the State trust company, of the State trust company. A copy of the
27 inventory shall be filed with the clerk of the superior court of the county in which the action is
28 pending, and a copy shall be kept on file with the State trust company. The inventory shall be
29 open for inspection during usual business hours, provided that nothing herein shall require the
30 State trust company to remain open unnecessarily."

31 **SECTION 34.** G.S. 53-412 reads as rewritten:

32 **"§ 53-412. Commissioner hearings; appeals.**

33 (a) This section does not grant a right to a hearing to a person that is not otherwise
34 granted by governing law.

35 (b) The Commissioner may convene a hearing to receive evidence and argument
36 regarding any matter before the Commissioner for decision or review under the provisions of
37 this Article. The hearing shall be conducted in accordance with Article 3A of Chapter 150B of
38 the General Statutes.

39 (c) Disputes over decisions and actions of the Commissioner under the provisions of
40 this Article shall be "contested cases" as defined in G.S. 150B-2(2).

41 (d) Except as expressly provided otherwise by this Chapter, an order of the
42 Commissioner may be appealed, in writing, to the Commission for review, pursuant to
43 ~~G.S. 53-92(d)~~, G.S. 53C-2-6. The Commission may affirm, modify, or reverse a decision of the
44 Commissioner.

45 (e) Petitions for judicial review from the Commission shall be made to the Wake
46 County Superior Court and shall proceed as provided in ~~G.S. 53-92(d)~~, G.S. 53C-2-6."

47 **SECTION 35.** G.S. 54-73 reads as rewritten:

48 **"§ 54-73. Banking laws applicable.**

49 ~~The statutes relating to banks and banking in this State, that is, G.S. 53-1 to 53-158~~
50 ~~[G.S. 53-1 to 53-242],~~ The banking laws as defined in G.S. 53C-1-4(5), insofar as applicable
51 and not in conflict with the provisions hereof shall apply to land mortgage associations."

1 **SECTION 36.** G.S. 54B-4(b) reads as rewritten:

2 "(b) As used in this Chapter, unless the context otherwise requires, the term:

3 ...

4 (14a) "Commissioner" means the Commissioner of Banks authorized pursuant to
5 G.S. 53-92, Article 2 of Chapter 53C of the General Statutes.

6 "

7 **SECTION 37.** G.S. 54B-34.2(a) reads as rewritten:

8 "(a) A savings and loan association, upon a majority vote of its board of directors, may
9 apply to the Commissioner of Banks for permission to convert to a bank, as defined under
10 G.S. 53-1(1), G.S. 53C-1-4(4), or to a national bank or other form of depository institution and
11 for certification of appropriate amendments to its certificate of incorporation to effect the
12 change. Upon receipt of an application to so convert, the Commissioner of Banks shall examine
13 all facts connected with the conversion including receipt of approval of the converting
14 institution's plan of conversion by other federal or state regulatory agencies having jurisdiction
15 over the institution upon completion of its conversion. The depository institution applying for
16 permission to convert shall pay all the expenses and costs of examination."

17 **SECTION 38.** G.S. 54B-46(a) reads as rewritten:

18 "(a) Any bank, as defined in G.S. 53-1, G.S. 53C-1-4(4), may convert to a stock
19 association as provided in this section."

20 **SECTION 39.** G.S. 54B-47(a) reads as rewritten:

21 "(a) Any State association, upon a majority vote of its board of directors, may apply to
22 the Commissioner of Banks for permission to merge with any bank, as defined in G.S. 53-1,
23 G.S. 53C-1-4(4)."

24 **SECTION 40.** G.S. 54B-54 reads as rewritten:

25 "**§ 54B-54. Deputy commissioner of Savings Institutions Division.**

26 There shall be a deputy commissioner of the Savings Institutions Division as appointed by
27 the Commissioner in G.S. 53-93.1(b), G.S. 53C-2-2. The deputy commissioner authorized by
28 this section shall perform any duties and exercise any powers directed by the Commissioner."

29 **SECTION 41.** G.S. 54B-158 reads as rewritten:

30 "**§ 54B-158. Insured or guaranteed loans.**

31 An association may make insured or guaranteed loans in accordance with the provisions of
32 G.S. 53-45, G.S. 53C-5-3."

33 **SECTION 42.** G.S. 54C-4(b) reads as rewritten:

34 "(b) Unless the context otherwise requires, the following definitions apply in this
35 Chapter:

36 ...

37 (8a) Commissioner. – The Commissioner of Banks authorized pursuant to
38 G.S. 53-92, Article 2 of Chapter 53C of the General Statutes.

39 "

40 **SECTION 43.** G.S. 54C-40(a) reads as rewritten:

41 "(a) A State savings bank, upon a majority vote of its board of directors, may apply to
42 the Commissioner of Banks for permission to merge with any bank, as defined in G.S. 53-1,
43 G.S. 53C-1-4(4), or any association, as defined in G.S. 54B-4."

44 **SECTION 44.** G.S. 54C-47(a) reads as rewritten:

45 "(a) A State savings bank, upon a majority vote of its board of directors, may apply to
46 the Commissioner of Banks for permission to convert to a bank, as defined under G.S. 53-1(1),
47 G.S. 53C-1-4(4), or to a national bank or other form of depository institution and for
48 certification of appropriate amendments to its certificate of incorporation to effect the change.
49 Upon receipt of an application to so convert, the Commissioner of Banks shall examine all facts
50 connected with the conversion, including receipt of approval of the converting institution's plan
51 of conversion by other federal or state regulatory agencies having jurisdiction over the

1 institution upon completion of its conversion. The depository institution applying for
2 permission to convert shall pay all the expenses and costs of examination."

3 **SECTION 45.** G.S. 54C-122(e) reads as rewritten:

4 "(e) A savings bank may make insured or guaranteed loans in accordance with
5 ~~G.S. 53-45~~G.S. 53C-5-3."

6 **SECTION 46.** G.S. 116B-55 reads as rewritten:

7 "**§ 116B-55. Contents of safe deposit box or other safekeeping depository.**

8 Contents of a safe deposit box or other safekeeping depository held by a financial
9 organization is presumed abandoned if the apparent owner has not claimed the property within
10 the period established by ~~G.S. 53-43.7~~G.S. 53C-6-13 and shall be delivered to the Treasurer as
11 provided by that section. If the contents include property described in G.S. 116B-53, the
12 Treasurer shall hold the property for the remainder of the applicable period set forth in that
13 section before the property is deemed to be received for purpose of sale under G.S. 116B-65."

14 **SECTION 47.** G.S. 120-123 reads as rewritten:

15 "**§ 120-123. Service by members of the General Assembly on certain boards and
16 commissions.**

17 No member of the General Assembly may serve on any of the following boards or
18 commissions:

19 ...

20 (3a) The State Banking Commission, as established by ~~G.S. 53-92~~Article 2 of
21 Chapter 53C of the General Statutes.

22"

23 **SECTION 48.** G.S. 143-143.9(1) reads as rewritten:

24 "(1) Bank. – A federally insured financial institution including institutions
25 defined under ~~G.S. 53-1(1)~~G.S. 53C-1-4(4), savings and loan associations,
26 credit unions, savings banks and other financial institutions chartered under
27 this or any other state law or chartered under federal law."

28 **SECTION 49.** G.S. 164-11.6(a) reads as rewritten:

29 "(a) The chapters, subchapters, articles and sections now comprising Volume 2B of the
30 General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of
31 ~~G.S. 53-1~~G.S. 53C-1-1 through 82-18, now in force, as amended, are hereby reenacted and
32 designated as Replacement Volume 2B of the General Statutes of North Carolina."

33 **SECTION 50.** G.S. 164-11.7(a) reads as rewritten:

34 "(a) The chapters, subchapters, articles and sections now comprising Volumes 2B and
35 2C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting
36 of ~~G.S. 53-1~~G.S. 53C-1-1 to G.S. 105-462, now in force, as amended, are hereby reenacted and
37 designated as 1965 Replacement Volumes 2B, 2C and 2D of the General Statutes of North
38 Carolina."

39 **SECTION 51.** This act becomes effective October 1, 2012.