THE CATAWBA NATION

BANKING AND FINANCIAL SERVICES REGULATION

Regulation No. 004-23

Adopted by the Zone Authority Commission

April 25, 2023

CHAPTER

Catawba Digital Economic Zone

CHAPTER 1

DEFINITIONS, GENERAL PROVISIONS, AND PENALTIES

Section Titles

1.1. Applicability of provisions--Retention of capital structure by banks.

Within the jurisdiction of The Catawba Nation, any bank, branch bank, drive-in facility, bank service corporation, or other entity identified by the Banking Commission shall be subject to this Title, except that the legality of their organization under prior law is not affected by this Title. Banks may retain their existing capital structure; however, the Banking Commission may order any bank or enterprise to comply with the capitalization requirements of this Title or such additional amounts as the Banking Commission deems necessary for the sound conduct of banking.

1.2. Definition of terms.

(1) "**Articles of incorporation**" means articles of incorporation for a bank organized by incorporators as a corporation or by members as a limited liability company pursuant to applicable law;

(2) "**Bank**" means any corporation or limited liability company authorized under this Title to engage in the business of banking or in the combined business of a bank and trust company or in the combined business of a bank with trust powers;

(3) "**Bank holding compan**y" means a bank holding company as defined in 12 U.S.C. 1841, as amended;

(4) "**Banking**" means the business of receiving deposits, discounting commercial paper, or buying and selling exchange, and any other activity authorized by this Title;

(5) "**Banking day**" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

(6) "**Board of directors**" means the board of directors for a bank organized by incorporators as a corporation, a manager for a manager-managed bank, or a member for a member-managed bank organized as a limited liability company pursuant to applicable law;

(7) "**Branch bank**" means a branch place of business maintained by a bank to conduct its banking business;

(8) "**By-laws**" means the by-laws for a bank organized by incorporators as a corporation, or the operating agreement for a bank organized by organizers or members as a limited liability company pursuant to applicable law;

(9) "**Commission**," the Banking Commission of The Catawba Nation;

(10) "**Debt cancellation contract**" is a loan term or contractual arrangement modifying loan terms under which a bank agrees to cancel all or part of a customer's obligation to repay an extension of credit from the bank upon the occurrence of a specified event. The contract may be separate from or a part of other loan documents. The term, debt cancellation contract, does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment, or the bank's unilateral decision to allow a deferral of repayment;

(11) "**Debt suspension contract**" is a loan term or contractual arrangement modifying loan terms under which a bank agrees to suspend all or part of a customer's obligation to repay an extension of credit from the bank upon the occurrence of a specified event. The contract may be separate from or a part of other loan documents. The term, debt suspension contract, does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment, or the bank's unilateral decision to allow a deferral of repayment.

(12) "**Dividends**" are distributions for a corporation or distributions for a limited liability company;

(13) "**Executive officer**" means every officer who participates or has authority to participate, otherwise than in the capacity of a director, in major policy-making functions of the bank, regardless of whether the officer has an official Title or whether the officer's Title contains a designation of assistant and regardless of whether the officer is serving without salary or other compensation. The chairman of the board, the president, every vice-president, the cashier, secretary, and treasurer of a bank are assumed to be executive officers, unless, by resolution of the board of directors or by the bank's bylaws, any such officer is excluded from participation in major policy-making functions, otherwise than in the capacity of a director of the bank, and the officer does not actually participate therein;

(14) "**Fully defeased bonds or notes**" are obligations issued by any federally recognized Indian Tribe, state, or municipal subdivision, the repayment of which has been irrevocably guaranteed by other securities which securities are issued by or are fully guaranteed by the United States government;

(15) "**Loan production office**" is an office which is apart from its main bank or branch which is staffed or controlled by a bank, and where loans are solicited but are not approved or disbursed;

(19) "**Mobile branch bank**" is a branch bank that does not have a single, permanent site and uses a vehicle that travels to various locations to enable the public to conduct banking business. A mobile branch bank may serve defined locations on a regular schedule or may serve a defined area at varying times and locations;

(20) "**National bank**" means any corporation organized pursuant to 12 U.S.C. § 21, as amended;

(21) **"Stock"** means shares for a bank organized by incorporators as a corporation and member equity for a bank organized as a limited liability company;

(22) "**Stockholder**" means a shareholder of a bank organized by incorporators as a corporation and a member for a bank organized by organizers or members as a member as a limited liability company.

1.3. Adverse claims against bank deposits, contents of safe deposit box or property in safekeeping.

Notice to any bank of an adverse claim to a deposit or other item standing on its books to the credit of any person, or to the contents of a safe deposit box or property held in safekeeping, shall not be sufficient to cause said bank to recognize such adverse claim unless:

(1) In the case of a deposit, the adverse claimant shall execute and deliver to such bank, in form and with sureties acceptable to it, a bond indemnifying such bank from any and all liability on account of the recognition by the bank of such adverse claim, or unless such adverse claim is made through acts or proceedings pursuant to law;

(2) In the case of a safe deposit box, such box is leased or the property is held in the name of the lessee under a written instrument designating that the contents constitute property held in a fiduciary capacity, and the adverse claim is supported by a verified statement of facts disclosing that it is made by or on behalf of a beneficiary or other person having an interest therein and that there is good cause to believe that the contents thereof are in danger of misappropriation, unless the bank is directed to do so by a court order.

1.4. Disqualification of officer, employee, or director for violation--Civil liability.

Any officer, employee or director of a bank who is convicted of violating any of the provisions of this Title is disqualified from thereafter acting as an officer, employee or director of any bank and may be subject to a civil action by such bank or any of its stockholders for all losses sustained by reason of such violations.

1.5. Failure to obey Commission's orders--Civil liability.

Any officer, employee, or director of a bank who fails to obey any lawful order made by the Commission under provisions of this Title is subject to the imposition of a civil fine by the Commission up to one thousand dollars ($1,00.00) per violation for each day the officer, employee, director, or bank has willfully failed to comply with the order. Any funds received from such fines shall be credited to the Public Bank of The Catawba Nation as operational funds.

1.6. Procedure to recover fine.

Proceedings to recover any civil fine under 1.5 shall be conducted in accordance with the hearing provisions established in Chapter 30 of this Title.

1.7. Injunction against violation.

Whenever a violation of this Title by a bank or an officer, director, or employee thereof is threatened or pending, the Commission may take administrative or legal action for an injunction or other appropriate remedy.

1.8. Liability of bank as insurer or as guarantor or endorser of security instrument prohibited.

Except as expressly permitted in this Title, a bank shall not assume liability as an insurer or as a guarantor or endorser of any security instrument or obligation in which or with respect to which it has no property interest.

1.9. Concealment of bank transactions unlawful.

It shall be unlawful for an officer, director, employee, or agent of a bank to conceal or endeavor to conceal any transaction of the bank from any officer, director or employee of the bank or any official or employee of the Commission to whom it should properly be disclosed. Any such act of concealment is punishable as a misdemeanor-level criminal defense, and also subject to such administrative and financial penalties as the Commission determines appropriate.

1.10. False entries--Obstruction of examination--Felonies.

It is a felony-level criminal offense for an officer, director, employee, or agent of a bank:

(1) With intent to deceive, to make any false or misleading statement or entry or omit any statement or entry that should be in any book, account, report, or statement of the bank; or

(2) To obstruct or endeavor to obstruct a lawful examination of the bank by an officer or employee of the Commission.

1.11. False filing as misdemeanor.

No person may knowingly file or cause to be filed any statement, information, application, report, document or other form of proof with the Commission which is in whole or in part

materially false, nor may any person knowingly make or cause to be made any false entry in any book, document, record, application, information or other proof filed with the Commission pursuant to this Title or pursuant to an order or request of the Commission. A violation of this section is a misdemeanor-level criminal offense.

1.12. Payment or indemnification of person for fine, penalty or judgment unlawful--Civil liability--Exceptions--Action to recover payments.

It is unlawful for a bank to pay a fine or penalty imposed by law upon any person or to reimburse directly or indirectly any person by whom such fine or penalty has been paid. Any bank that makes an unlawful payment is subject to the imposition of a civil fine by the Commission not to exceed one thousand dollars for each unlawful payment. A bank may reimburse any person in settlement of its own liability or in connection with the acquisition of property against which there is a judgment or lien. Any payments made by a bank in violation of this section are recoverable and may be retained by the Commission.

1.13. Misappropriation of funds or information by officer, director, or employee as felony.

Any officer, director, or employee of a bank, who 1) wrongfully diverts or takes any of the money, funds, credits, data, information, or property of the bank, whether owned or held in trust, 2) who wrongfully withholds payment or remittance of the proceeds of any collection, 3) who without authority issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, judgment or mortgage, or 4) who makes any false entry in any book, report, or statement of the bank or report or statement required by the provisions of this Title, with knowledge and intent to deceive any person or entity, is guilty of a felony.

1.14. Receipt, possession, or sale of misappropriated funds or information as felony.

Any person who receives, possesses, conceals, stores, barters, sells, or disposes of any money, funds, credits, data, information, or property, knowing the same to have been wrongfully diverted or taken from the bank, is guilty of a felony.

1.15. Acknowledgments by officers or employees of banks validated.

No Notary Public or other public officer qualified to take acknowledgments or proofs of written instruments may be disqualified for taking the acknowledgment or proof of any instrument in writing in which a bank is interested by reason of employment, whether as officer or employee, or by reason of stock ownership or director status in a bank so interested.

_1.16. Severability of provisions.

If any provision of this Title or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications to this Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title are declared to be severable.

1.17. No duty to disclose information about customers--Exceptions.

Any bank or other enterprise subject to this Title has no duty to disclose information about its customers and has no duty to provide an opinion about the creditworthiness of its customers unless such information or opinion is required pursuant to a valid subpoena, court order, statute, or other legal process, or unless the customer authorizes the release of such information or opinion. Banks and enterprises subject to this Title may restrict the dissemination of information and creditworthiness of its customers by written policy or agreement.

1.18. Agreements or compacts with other jurisdictions--Administration--Filing--Availability.

The Commission may enter into agreements or compacts with authorized representatives of other jurisdictions to provide for the administration of banking laws under the provisions of a signed agreement or compact. In administering any agreement on behalf of The Catawba Nation, the Commission may adopt the policies, principles, and guidelines contained within the agreement. The Commission shall make any agreement or compact available to interested parties upon request, and copies of executed agreements, compacts, procedures manuals, and guidelines shall be filed with the Zone Authority of The Catawba Nation within fifteen days after execution or the effective date of the material, whichever is later.

CHAPTER 2

FINANCIAL INTEGRITY AND ANTI-MONEY LAUNDERING

Section Titles

2.01 Policy.

The creation of sustainable economic opportunities for the Catawba Nation and its citizens requires the establishment and maintenance of a sound financial system. A fundamental element of a sound financial system is the prevention of fraud, crime, and abusive practices that would undermine trust and confidence in the business transactions occurring within the Nation's economy. It is the policy of the Catawba Nation to create and enforce a comprehensive set of laws, regulations, and governance practices that will actively and robustly prevent, or detect, or eliminate any unlawful or unethical activity within the Nation's financial system. The agencies of the Nation shall work in partnership with the enforcement agencies of the United States and other jurisdictions to combat money laundering, tax evasion, and all forms of financial crime.

2.02 Scope of laws and regulations for financial integrity.

In addition to complying with the codified laws and regulations of the Catawba Nation, all financial activity with the Nation's jurisdiction shall comply with the applicable laws and regulations of the United States of America relating to the prevention of money laundering, tax evasion, and any other form of financial crimes or unlawful financial activity.

2.03 Enforcement coordination.

The Banking Commission shall actively partner with the financial regulatory agencies of the United States of America, including but not limited to FinCEN and the Office of the Comptroller of the Currency, and take appropriate actions to ensure the full and consistent enforcement of all laws and regulations for the prevention of money laundering, tax evasion, and any other form of financial crimes or unlawful financial activity. The Banking Commission may enter into agreements with regulatory and enforcement agencies of the United States and other jurisdictions to facilitate the purposes and enforcement of this chapter.

2.04 Reporting.

As part of its regular reporting to the Zone Authority, the Banking Commission shall include updates on the enforcement activities undertaken pursuant to this chapter, and the partnering coordination with agencies of the United States and other jurisdictions. The Banking Commission shall immediately report to the Zone Authority any evidence of violations of this chapter, and such reports shall be made in a closed session to preserve the confidentiality of ongoing investigations.

CHAPTER 3
BANKING COMMISSION

Section Titles

3.24. Confidentiality Requirements.

3. 25. Conflicts of Interest.

3.01. Establishment of Banking Commission.

The Banking Commission is established and shall be administered in accordance with the laws of The Catawba Nation ("Nation"). The Banking Commission is charged with supervision and control over the activities set forth in this Chapter 21 and as specified in the Chapter regarding the Public Bank of The Catawba Nation, and it shall exercise jurisdiction over such other activities as shall be conferred upon it by the Zone Authority of the Nation.

3.02. Director of Banking Commission--Vacancy--Qualifications.

The Banking Commission shall be under the administrative control and supervision of the Director, who shall be appointed by the Zone Authority of the Nation. If the office of Director is vacated, a successor shall be appointed to fill the unexpired term then remaining. The Director shall have professional and business experience appropriate to effectively discharge the duties and fulfill the responsibilities of the office.

3.03. Deputy Director--Appointment--Powers and Duties.

The Banking Commission shall appoint another member to serve as Deputy Director. During an absence or disqualification of the Director or during a vacancy in such office, the Deputy Director, as Acting Director, shall perform the duties of the Director.

3.04. Appointment of Banking Commission Members.

The Banking Commission shall consist of a minimum of five members appointed by the Zone Authority of the Nation, and may be expanded to a greater number if determined by the Zone Authority to be in the best interests of the Nation. A minimum of one member of the Banking Commission shall be an enrolled citizen of the Nation at the time of and during the appointment. The remaining members of the Banking Commission shall have the qualifications and professional and business experience appropriate to effectively discharge the duties and fulfill the responsibilities of the office. Prior to making appointments, the Zone Authority shall solicit and review recommendations for qualified candidates from The Corporate Nation and any other appropriate sources. The Director shall be the executive officer of the Banking Commission and shall comply with and enforce all orders and directions of the Banking Commission.

3.05. Banking Commission Staff.

The Banking Commission may employ such staff, examiners, legal counsel, and other aides as deemed necessary to assist in the performance of the members' duties. The Banking

Commission shall fix the compensation for staff and may dismiss any employee or agent at will. Each person hired by the Banking Commission in any capacity shall submit to a background investigation, including but not limited to financial and criminal history. Any person whose employment is subject to the requirements of this Section may enter service on a temporary basis pending receipt of results from the background investigation. The Banking Commission may, without liability, withdraw its offer of employment or terminate a temporary employment without notice or appeal if the investigation reveals that the person has been convicted of any financial crime, or any crime or other circumstances that reasonably suggest the person should not be employed by the Banking Commission.

3.06. Terms of Banking Commission Members.

The term of office of members of the Banking Commission shall be three years. The terms of office shall be staggered such that less than a majority of members will have their terms expire in any given year, and the terms of the initial members of the Banking Commission may be set for more or less than three years to establish the rotation of terms. Vacancies arising other than from the expiration of a term shall be filled by appointments by the Zone Authority of the Nation for the remainder of the unexpired term only, and such appointees shall meet the qualifications prescribed in this Chapter for the vacated position. Members shall serve until their successors are appointed and seated. Any member may be removed by the Zone Authority of the Nation for cause, which shall require a showing that the member violated the duties of the office to which appointed.

3.07. Secretary of Banking Commission.

The Banking Commission shall select one of its members to serve as Secretary, who shall be responsible for the appropriate documentation of business conducted by the members of the Banking Commission.

3.08. Compensation of Banking Commission Members.

Compensation for service as a member of the Banking Commission shall be established by the Zone Authority of the Nation, and each member shall be reimbursed for expenses incurred in the performance of duties.

3.09. Banking Commission Meetings.

The Banking Commission shall hold at least two regular meetings each year. Special meetings, to be held on such notice as the Director may issue, may be called at any time upon the written request of two members or by the Director. Meetings shall be conducted in the place and/or format designated by the Director, which shall be designed to maximize effective participation by the members and may include remote participation. The Banking Commission shall keep an official record of all proceedings and decisions.

3.1. Quorum--Replacement of Nonparticipating Member.

A majority of the voting members of the Banking Commission constitutes a quorum for the conduct of all business. At any meeting at which a quorum is not present, whether by reason of the inability of the member to participate or the member's disqualification pursuant to applicable regulations or policies, a designee identified by the Zone Authority of the Nation, temporarily assuming the powers and duties of a member of the Commission, shall replace the non-participating member of the Commission. The Commission as then composed shall proceed with the matters before it.

3.11. Rules Created by Commission.

The Commission may create and enforce necessary rules, consistent with the laws of the Nation, for the management and administration of banks, other financial entities, and their subsidiaries and affiliates over which it has jurisdiction, and to regulate its own procedures and practices.

3.12. Authority to Promote Competitive Equality.

The Commission may adopt rules:

(1) To authorize banks and other financial enterprises to participate in any public agency or other system, the purpose of which is to afford advantages or safeguards to banks or to depositors, and to comply with all requirements and conditions imposed upon such participants;
(2) To allow banks and other financial enterprises to engage in any other banking or nonbanking activities not prohibited by law, which the Commission deems appropriate; and
(3) To authorize banks and other financial enterprises to use new or different forms of accepting deposits, making loans, transferring funds, offering services, and such other subjects as it deems appropriate.

The Commission shall adopt only such rules that, in the opinion of the Commission, promote competitive equality between banks and other financial institutions and promote sustainable economic development within the jurisdiction of the Nation.

3.13. Chartered Banks Granted Equal Powers.

Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, expressed or implied, that a bank has under the laws of the Nation, a bank for which a charter is issued by the Commission shall have the powers and authorities conferred upon federally chartered banks. These powers and authorities include, without limitation, corporate governance and operational matters.

3.14. Rulemaking Considerations.

In making rules, the Commission shall promote the purposes set forth in the Chapter regarding the Public Bank of the Catawba Nation, and shall act in the interests of promoting and

maintaining a sound banking and financial system; securing deposits, depositors and other customers; preserving the liquid position of banks; promoting the competitive equality of banks and other financial institutions in all aspects of banking practices and permitted nonbanking activities; facilitating efficiency in financial transactions and documentation; and preventing injurious credit expansions and contractions.

3.15. Applications to Organize or Change Bank Operations.

(1) The Commission shall review and take appropriate actions on applications to organize or change control of a bank; an application for a bank merger; an application to open or close a branch bank, mobile branch bank, or loan production office; or an application to change a bank's location. After the filing of a completed application deemed acceptable by the Commission, the Director shall cause a public notice of the application to be published in a newspaper of general circulation serving the community most directly affected by the application, together with any other means of notification to interested persons as the Commission may determine appropriate.

(2) The notice shall direct that any interested persons may file a written objection or written comment to the application with the Commission within fifteen days following the date of publication. Within thirty (30) days following the date of publication, the Commission shall consider any written objection and written comment, and either approve or disapprove the application. The Commission shall provide written notice of the action on the application to the applicant and to any person having filed a written objection or written comment by mail to the person's last known address.

(3) An applicant may, within fifteen (15) days after the notice has been mailed, file a written request for a hearing before the Commission. Any person who has filed a written objection to the application may, within fifteen (15) days after the notice has been mailed, file a motion with the Commission to become a party to the application proceeding and request a hearing before the Commission. Unless the Commission grants the motion or unless the applicant has timely filed a written request for hearing before the Commission, the Commission's determination on the application is final. If the application involves establishment of any type of competitive banking service in which any banking commissioner is interested, the commissioner shall be deemed disqualified, and the Commission shall be recomposed as provided in Section 3.10 above.

3.16. Examination of Banks.

(1) The Commission shall examine, at least once in every two calendar years, and at such other times it may deem necessary, all of the affairs of each chartered bank or other financial institution and its subsidiaries. The Commission may establish a system of classifying banks and other institutions based on their current examination, and examine different classes with varying frequency. The Commission shall charge and collect a fee from all banks and other institutions to

cover the cost of examining and supervising banks based upon asset size and other factors as established by the Commission.

(2) The Commission shall examine any bank upon a formal application made by its board of directors. In addition to the regular fees prescribed, such bank shall pay all actual expenses incurred in the examination. The Commission may substitute an examination conducted by the Federal Deposit Insurance Corporation or the Federal Reserve System for an examination conducted pursuant to this section.

3.17. Subpoena Power.

The Director may issue subpoenas and subpoenas duces tecum relating to any matter under investigation by the Commission. The Director or designee thereof may administer oaths and examine witnesses under oath, and may invoke the aid of the Nation's courts and law enforcement authorities in enforcing the provisions of this Section.

3.18. Stockholder Actions Pending Judicial Determination.

The Director may order the prohibition of specific action at any stockholders' meeting of any entity pending timely application for judicial determination on any matter, if the Director believes that such order is necessary to protect the bank against violations of law, improper management practices, to safeguard the funds of depositors, or to prevent violations of this Chapter or any regulation adopted hereunder.

3.19. Removal of Director, Officer, or Employee of Banks.

The Director may, subject to the approval of the Commission, order the removal and/or prohibition from the banking industry within the jurisdiction of the Nation, of any director, officer, or employee of a bank, upon showing that the individual has engaged or participated in any unlawful banking activity, any unsafe or unsound practice in which the bank has or might suffer financial loss or other damage, or upon showing that the individual has knowingly caused the bank to be in violation of any applicable laws or any rule issued thereunder, or who is determined by the Director to have knowingly and willfully violated the terms of any order issued by the Commission. Any person affected by an order under this Section has the right to a hearing as provided in this Chapter.

3.2. Review of Removal Orders.

The Commission shall review and either approve or disapprove any removal order requested by the Director. Any proceedings held pursuant to this Section shall conform with the provisions of this Chapter governing contested cases.

3.21. Regulation of Accounting Practices.

The Commission may require any bank or other financial enterprise:

(1) To maintain its accounts in a prescribed manner having regard for the size of the bank;
(2) To observe methods and standards for determining the value of various types of assets;
(3) To charge off the whole or part of any asset which could not then be lawfully acquired;
(4) To write down an asset to its market value;
(5) To record liens and other interests in property;
(6) To obtain a financial statement and adequate credit information from borrowers;
(7) To require borrowers to obtain insurance against damage to real or personal property taken as security;
(8) To require borrowers to research or obtain insurance of Title to real estate or chattels taken as security;
(9) To maintain adequate insurance against such other risks relating to the bank premises, its deposits, vaults, and offices as determined to be necessary and appropriate for the protection of deposits and the public.

3.22. Orders Against Unsound Practices.

The Director may issue a temporary order having force until the next regular meeting of the Commission, or special meeting of the Commission if requested by the Director or by a member of the Commission, requiring that any person or entity cease and desist from engaging in any unsound or unlawful banking or other financial practice. Subject to the hearing provisions of this Chapter, the Commission may enter a permanent order enjoining and prohibiting any unsound or unlawful practices.

3.23. Injunctive Relief.

If a person, bank, or other entity subject to an order entered by the Director or the Commission pursuant to this Chapter fails to comply with such order, the Director may seek an injunction from any court of competent jurisdiction, ordering such person, bank, or entity to cease and desist from the unsound or unlawful practice. An injunction shall be granted upon a showing that certain practices were engaged in that are contrary to sound banking practices, and that these practices contributed to the financial detriment of the bank.

3.24. Confidentiality Requirements.

Before entering or undertaking any duties, each member of the Commission, the Director, and all officers and employees of the Commission shall take an oath to keep confidential all facts and information obtained in the discharge of their official duties, except:
(1) As the public duty of such officer or appointee requires reporting upon or taking special action regarding the affairs of any bank or other entity;
(2) Information with reference to a suspended bank which may be made public if, in the discretion of the Director, it is to the best interests of the creditors thereof;
(3) If called as a witness in a court or before the Zone Authority of the Nation;

(4) The Director or any of his appointees may disclose to the Federal Reserve Board, the Federal Deposit Insurance Corporation, or the Office of the Comptroller of the Currency, or the examiners appointed by them, all information with reference to the affairs of any bank which is insured by the Federal Deposit Insurance Corporation;

(5) The Director may disclose reports of examinations to other federal or state banking agencies on a reciprocal basis. Five (5) days prior to the release of such reports, the Director shall inform the affected bank of the Director's intention to make the release and the name of the agency to which the report will be released.

3.25. Conflicts of Interest.

No officer or employee of the Commission may be an officer, director, trustee, attorney, owner, shareholder, or partner in any bank or other entity regulated by the Commission, nor receive any payment or gratuity directly or indirectly from such organizations, nor be indebted to such organizations, nor engage in negotiation of business for others with any such organization. Any persons having or involved with such interests at the time of their appointment to duty with the Commission shall be granted a reasonable length of time after the appointment to sell or to relinquish any such interest, or to transfer that interest to a nonrelated trustee for the tenure of the individual's term of office.

CHAPTER 4

ORGANIZATION, APPLICATIONS, AND CAPITAL STRUCTURE OF BANKING CORPORATIONS

Section Titles

4.26 Lien on shares--Enforcement--Marking of certificates.

4.27 Purchase or purchase money loans on security of own stock prohibited--Exception.

4.28 Credit of dividends, interest, or profits on indebtedness--Foreclosure of lien.

4.29 Adoption and approval of bylaws.

4.30 Indemnification of officers, directors, or employees.

4.31 Board of directors--Number of members--Citizenship requirements--Election.

4.32 Removal of directors--Vote required.

4.33 Board of directors--Meetings.

4.34 Election of officers--Terms--Vacancies.

4.35 Names of officers and information forwarded to Commission--Vacancy on refusal to confirm.

4.36 Bonds of officers and employees.

4.37 Insurance protection.

4.38 Amount of bonds and insurance prescribed by bank directors--Approval by Commission.

4.1. Corporation laws applicable to banks.

All provisions of law applicable to corporations generally shall be applicable to banks, except where inconsistent with this Title, in which case this Title shall govern.

4.2. Bank organized as limited liability company--Rules.

A bank may be organized as a limited liability company, and the Commission shall establish rules to facilitate the organization and the operation of a bank organized as a limited liability company to operate on an equal and parity basis with a bank organized as a corporation.

4.3. Articles of incorporation or articles of organization--Content--Name of bank--Capital stock or members' equity.

For a bank organized as a corporation, the articles of incorporation of a bank shall state, and for a bank organized as a limited liability company, the articles of organization of a bank shall state:

(1) That the corporation or limited liability company is formed for the purpose of engaging in the business of banking, or as a bank and trust company, or as a bank and trust department;

(2) The period for which such corporation or limited liability company is organized, not exceeding twenty years.

The name of a bank organized under this Title shall be sufficiently distinctive to enable prompt identification of its ownership.

4.4. Incorporators of Bank.

The incorporators of a bank shall be any number of natural persons and shall be eighteen years of age or older.

4.5. Minimum capital.

The total capital of each newly organized bank shall be in an amount the Commission determines adequate, and the Commission shall record the approved capital amount in the official records for each bank.

4.6. Sale price of original stock issue or original issue of members' equity--Excess credited to surplus.

For a bank organized as a corporation, the original issue of bank stock, and for a bank organized as a limited liability company, the original issue of members' equity, the excess revenue of a sale over the par value shall be credited on the books of the bank to the surplus.

4.7. Transfers to surplus.

The Commission may direct that a percentage of a bank's net profit for any dividend period, not to exceed one percent (1%), shall be carried to the surplus fund for that bank. Any such direction by the Commission shall be accompanied by written findings describing the circumstances requiring the surplus fund transfer for the conduct of sound banking practices.

4.8. Applications--Fee.

Any application filed pursuant to this Title shall be delivered to the Commission and contain any information the Commission may require. The application shall be accompanied by an application fee in an amount set by the Commission.

4.9. Acceptance of application for charter.

If an application or accompanying documents do not conform to the requirements of this Title or the rules of the Commission, the Commission shall return the application calling attention to the defects therein, and the application may be resubmitted with appropriate amendments. The Commission shall acknowledge receipt of applications and provide the applicant with an expected timeline for completion of the Commission's review.

4.1. Conditions to be considered in ruling on application.

In ruling upon any bank application, the Commission shall consider the following conditions:

(1) The financial history and condition of the applicant;

(2) The adequacy of the applicant's financial structure;

(3) The future earning prospects of the applicant;

(4) The general character and fitness of the management and ownership of the applicant;

(5) The applicant's ability to serve the community as described in the application; and

(6) Such other facts and circumstances as the Commission determines to be relevant.

In any hearing on an application, the Commission's findings with respect to the above conditions together with all other pertinent information shall be entered into the hearing record.

4.11. Hearing on application.

Within ninety (90) days following an applicant's request for hearing or the Commission's order granting a request for hearing, the Commission shall conduct a hearing on the application. The Commission shall consider the evidence presented at the hearing and other pertinent information submitted by any interested party. The Commission shall, within forty-five (45) days from the date of the hearing, prepare and file in appropriate written form, findings of fact and conclusions of law which shall become a permanent part of the record relating to the pending application.

4.12. Endorsement and filing of approved articles--Notice of disapproval.

If the Commission approves a charter application, the approval shall be endorsed on the articles of incorporation or organization. The approval shall be filed in the record offices of the

Commission and The Catawba Nation, and a copy shall be returned to the incorporators or organizers of the chartered entity. If the Commission disapproves an application, it shall so notify the incorporators or organizers within twenty (20) days of such disapproval in writing, stating the reasons for disapproval.

4.13. Subscription of shares--Minimum collection--Refund on disapproval of application.

If required by the Commission, the incorporators of a charter applicant shall collect a percentage of the subscription price of each share of stock subscribed for at the time such subscriptions are issued. If the application is disapproved by the Commission, that portion of the moneys so collected remaining after the payment of the expenses incidental to such application shall be proportionally refunded to the subscribers.

4.14. Call by incorporators for full payment of subscriptions--Issuance of certificate of authority--Commencement of business within one year.

The incorporators may call for the payment of subscriptions in full upon receipt of the notice that the articles of incorporation have been approved. The Commission shall issue a certificate of authority when the capital stock of such bank has been fully subscribed and paid in money and such bank is lawfully entitled to commence business. No bank shall transact any business, except such as is incidental or necessarily preliminary to its organization, until such certificate of authority has been issued by the Commission. Such certificate of authority shall be void if the bank named therein fails to commence business within one year from the date thereof.

4.15. Applications for branch banks and detached drive-in facilities--Applicable provisions.

The provisions of §§ 4.8 to 4.14, inclusive, insofar as they are by their terms applicable, govern applications for branch banks and detached drive-in facilities.

4.16. Preferred stock, capital notes, and debentures--Approval of issuance--Terms of issue--Approval of retirement or payment.

The Commission may approve the issuance of preferred stock, capital notes, debentures, or other bank securities after approval of the majority of the stockholders. The terms of issue shall set forth the voting rights available thereon and the rank or priority, if any, of depositor or other creditor with reference to such issue in case of insolvency of the issuing bank. No such stock, notes, debentures or other bank securities may be issued prior to approval by the Commission. Before any such issue is retired or paid, the bank shall obtain the written approval of the Commission.

4.17. Preferred stock, capital notes, and debentures outstanding--Restrictions on dividends.

No dividends may be declared or paid on the capital stock of any bank which has outstanding capital notes or debentures, or if preferred stock has been issued without prior written approval of the Commission unless:

(1) In the case of an issue of capital notes or debentures, the surplus and undivided profits of such bank equal such issue, the retirement requirements and interest on the issue have been paid; or

(2) In the case of an issue of preferred stock, all the terms of issue shall have been satisfied.

4.18. Dividends--Restrictions and requirements for declaration.

Dividends to stockholders may be declared from net profits by the board of directors of a bank provided that all provisions of this Title relating to the maintenance of capital accounts have been complied with. The minutes of such a meeting shall reflect that a determination has been made that the reserve for loan and lease losses has been adequately funded, the amount carried to surplus, if any, the amount of dividend declared, the amount of net undivided profits, if any, remaining and the amount of total equity capital remaining.

4.19. Approval required for dividends exceeding profits.

The approval of the Commission is required before a dividend is declared if the total of all dividends, including the proposed dividend, declared by the directors of a bank in any calendar year exceeds the total of its net profits of that year to date combined with its retained net profits of the preceding two years, less any required transfers to surplus or a fund for the retirement of any preferred stock.

4.2. Recovery of dividends paid when capital impaired.

Dividends paid to any stockholder of a bank, which shall in any way impair or diminish the capital, may be recovered from any stockholder receiving the same unless the capital impairment is otherwise removed. The directors of any bank who pay a dividend when the bank is insolvent or in danger of insolvency, or when there are not sufficient net profits available, or when the bank is subject to an order prohibiting the payment of dividends, shall be jointly and severally liable to the creditors of the bank for recovery of improperly paid funds.

4.21. Net profits defined.

Net profits shall be equal to the net income or loss as reported by a bank in its reports of condition and income. In computing its net profits under this section, a bank may not add its provision for loan and lease losses to, nor deduct net charge offs from, its reported net income.

4.22. Amendment of articles of incorporation--Changes requiring approval--Filing of amendments.

A bank may amend its articles of incorporation, except that prior approval of the Commission shall be required for a bank to change its name or location; acquire or abandon trust powers; change the number or par value of its shares of stock; change the amount of capital; or, extend its corporate existence. Such approval must be based upon a finding that the security of existing creditors will not be impaired by the proposed action. All such amendments shall be filed in the same manner as provided for original articles of incorporation.

4.23. Extension of charter.

For banks with a time-limited corporate term, prior to the expiration of the period for which it was incorporated a bank may extend its corporate existence by amending its articles of incorporation as provided in § 4.22.

4.24. Reporting transfers of stock.

All transfers of shares of bank stock in excess of five percent of the voting stock of a bank or of its parent holding company shall be immediately reported to the Commission. The transfer of such shares is not valid until recorded in the transfer books, but none may be recorded while the bank is subject to an order of the Commission to make good an impairment of capital. Any transfer shall be reported to the Commission if, after the transfer, the acquiring shareholder owns, directly or indirectly, twenty-five percent or more of the common stock of a bank or bank holding company unless notice of such fact had previously been reported to the Commission.

4.25. Change in control of bank.

A change of control created by the acquisition of shares in satisfaction of a debt previously contracted in good faith or through testate or intestate succession, bona fide gift, or trust distribution does not require an application for change in control. The acquirer shall advise the Commission within thirty days after the acquisition and provide such information as the Commission may request. For the purposes of this section, the term, control, means the power, directly or indirectly, to direct the management or policies of a bank or to vote twenty-five percent or more of any class of voting securities of a bank.

4.26. Lien on shares--Enforcement--Marking of certificates.

Any bank has a lien upon the shares of any stockholder of the bank or any stockholder of the parent bank holding company who is indebted to it, and for such purpose, in addition to stock duly recorded, the bank may enforce its lien against stock actually owned by the debtor but not recorded on the transfer books. All certificates for such stock shall have printed or stamped thereon the words: "Subject to lien for any indebtedness of holder to bank," and such lien is not

enforceable against a purchaser in good faith unless such words are printed or stamped on such certificate.

4.27. Purchase or purchase money loans on security of own stock prohibited--Exception.

No bank may make any purchase money loans or discounts on the security of the shares of its own capital stock, or on the shares of its parent holding company, nor be the purchaser or holder of any such shares unless such security or purchase is necessary to prevent loss upon a debt previously contracted in good faith. Stock so purchased or acquired shall, within six months of the time of its purchase, be sold or disposed of at public or private sale, and if not disposed of within that time, may no longer be included in the assets of such bank. However, a bank may purchase for fair value fractional shares of a bank's common stock from the holders thereof for the purpose of canceling the fractional shares if the bank meets all capital requirements after cancellation of the fractional shares.

4.28. Credit of dividends, interest, or profits on indebtedness--Foreclosure of lien.

While any indebtedness under § 4.26 exists, all dividends, interest, or profits on such stock, if any, shall be credited by the bank on such indebtedness in the event the bank has exercised its rights to acquire or purchase the stock. The lien hereby created in favor of the bank may be foreclosed by such bank in the manner provided by law for the foreclosure of liens.

4.29. Adoption and approval of bylaws.

Every bank shall adopt a code of bylaws before being authorized to commence business. Bylaws, as well as all amendments or additions thereto, so adopted shall be effective only after they have been approved by the Commission. After their adoption and approval, the bylaws shall be written in full upon the minute book of the bank and be subject to such rights of inspection as exist for other corporate books and records.

4.3. Indemnification of officers, directors, or employees.

A bank may indemnify by purchase of insurance or otherwise any current or former officer, director, employee or agent, heirs, personal representatives, and successors in interest.

4.31. Board of directors--Number of members--Citizenship requirements--Election.

The board of directors of every bank shall consist of not less than five members. At all times, the composition of the board of directors shall be in conformance with the requirements for banks regulated by the government of the United States.

4.32. Removal of directors--Vote required.

Any director may be removed by the stockholders at any regular or special meeting, except that no director may be removed unless the votes cast against a motion for removal are less than the total number of shares outstanding, divided by the number of authorized directors, but all of the directors may be removed if a majority of the outstanding shares approves a motion for the removal of all.

4.33. Board of directors--Meetings.

The board of directors shall hold regular meetings at times prescribed in the bylaws of the bank. Bylaws must provide for at least as many meetings as the minimum number established by the Commission, if any. Any director of the bank or the Commission may call a special meeting. The board of directors or an executive committee shall review at least quarterly the transactions occurring since the last review.

4.34. Election of officers--Terms--Vacancies.

The officers of every bank shall be elected by the board of directors at a duly called and publicized board meeting. The officers shall hold office until their successors are elected and qualified, subject to removal by the board at any time. Vacancies may be filled by appointment of successors by the board of directors at any regular or special meeting, to hold office until the next regular election and until successors qualify.

4.35. Names of officers and information forwarded to Commission--Vacancy on refusal to confirm.

Within ten days after the election or appointment of any officer, the board of directors shall cause to be forwarded to the Commission the name or names of such officer or officers together with such other information as may be required by the Commission. The Commission shall have the power to accept or deny the confirmation of any officer, and if the Commission shall refuse to confirm the election or appointment of any such officer, such office shall immediately become vacant.

4.36. Bonds of officers and employees.

The directors of a bank shall direct and require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salaries or compensation, which bonds shall provide for indemnity to such bank on account of any losses sustained by it as a result of any dishonest, fraudulent, or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be in individual, schedule, or blanket bond form, and the premiums therefor may be paid by the bank.

4.37. Insurance protection.

The directors of a bank shall require and maintain suitable insurance protection for the bank against damage, robbery, burglary, theft, and other insurable hazards of loss to which the bank may be exposed in the operation of its business.

4.38. Amount of bonds and insurance prescribed by bank directors--Approval by Commission.

The directors of a bank shall be responsible for prescribing at least once in each year the amount or penal sum of bonds and coverage amounts of insurance policies and the sureties or underwriters thereon, after giving due and careful consideration to all known elements and factors of risk or hazard. Such action shall be recorded in the minutes of the board of directors and thereafter be reported to the Commission and be subject to Commission approval.

CHAPTER 5

GENERAL POWERS OF BANKS

Section Titles

5.1. Miscellaneous banking powers.

In addition to powers otherwise conferred by the laws of the Nation, a bank may exercise all such powers as are usual in carrying on the business of banking, including, the buying, discounting, and negotiating promissory notes, bonds, drafts, bills of exchange, foreign and domestic, and other evidences of debt; engaging in digital commerce and the transfer and exchange of digital assets; by receiving commercial and saving deposits under such rules as the Commission may establish; by buying and selling coin and bullion, and by buying and selling exchange, foreign and domestic; by issuing letters of credit, by loaning money on personal and real security, and by renting receptacles for safekeeping; and all such other activities authorized under applicable law.

5.2. Purchase and sale of securities on order of customer--Contract with securities brokerage services allowed.

A bank may, directly or through subsidiaries, purchase or sell without recourse any security upon the order of a customer for his account. The terms of this section shall be construed to permit banks to contract with securities brokerage services.

5.3. Operation of electronic services.

A bank may operate electronic services for its own use and the use of its customers, including but not limited to the use of electronic payments, electronic funds transfers, digital asset and digital currency transactions, and the use of digital and blockchain security and transaction recording.

5.4. Insurance business authorized.

A bank is expressly empowered, directly or through subsidiaries, to engage in all facets of the insurance business.

5.5. Certificate of authority required to engage in banking business--Misdemeanor.

No person or corporate entity may advertise, publish, or otherwise represent that it is engaged in the business of banking without having first obtained a certificate of authority from the Commission, as provided in this Title. A violation of this section is a misdemeanor.

5.6. Order to cease and desist for violation--Right to appeal.

For any violation of § 5.5, the Commission issue an order to cease and desist from all activities determined to be the business of banking or otherwise unlawful.

5.7. Arrest and prosecution for violation.

The Commission may take such action as necessary to cause the arrest and prosecution of any person in violation of § 5.5. Upon request of the Commission, the attorney general and law enforcement officers of the Nation shall assist in such prosecution.

5.8. Deposit insurance --Federal reserve system membership authorized.

Any bank authorized to engage in business under this Title may obtain insurance of its deposits by the United States or any agency thereof. The Commission may also establish requirements for insurance coverage of deposits. Any bank is authorized to acquire and hold membership in the Federal Reserve system, but such bank shall also be subject to the supervision and examination required by the laws of the Nation relating to banks.

5.9. Real property authorized to be held by bank.

A bank may lease, purchase, hold, and convey in its own name, or through investment in a corporation organized to lease such property to it.

5.1. Property authorized to be purchased to satisfy debts--Limitation on period of retention.

A bank may, by itself or through a subsidiary, acquire, hold, and convey property of any kind to satisfy debts previously contracted in good faith and in the ordinary course of business.

5.11. Borrowing money by bank--Pledge of assets.

A bank may borrow money and pledge assets for terms and upon conditions established by the Banking Commission.

5.12. "Bills payable" issued for money borrowed by bank--Record of amount borrowed.

A bank shall record an official "bills payable" entry for any money borrowed by it, and shall show on its books and in all reports and statements made by it, the true amount of money borrowed by it.

5.13. Rediscounting of negotiable paper--Limitation on pledge of assets as security.

A bank may rediscount in good faith and endorse any of its negotiable paper. However, no bank may pledge any of its assets as collateral security for the payment thereof, except as required

by rules of the Federal Reserve bank. The Commission may require such bank to repay any such rediscounts.

5.14. Sale, transfer, or assignment of loan participations.

A bank may sell, transfer, or assign participations in mortgages and other loans made by a bank to agencies of a government, to public instrumentalities, or to financial institutions of any type including, but not limited to, banks, savings and loan associations, finance companies, bank holding companies, insurance companies, and other financial institutions, wherever located.

5.15. Sale of assets of bank.

A bank may sell any asset in the ordinary course of business, or, with the approval of the Commission in any other circumstance, but the sale of all or substantially all of the assets of a bank or a department thereof is considered a voluntary liquidation governed under applicable provisions of this Title.

5.16. Grounds and procedure for nonobservance of banking hours--Extension of hours.

In the event of a legal holiday, power failure, fire, act of God, riot, strike, robbery or attempted robbery, epidemic, interruption of communication facilities, or for such other reason as the Commission may determine to be good cause, or in the event of the declaration of the existence of an emergency by a person lawfully exercising the power to make such declaration, a bank, in the reasonable and proper exercise of its discretion, may determine not to open its main office or any branch on any business or banking day, or, if having opened, to close such main office or any branch during the continuation of any such occurrence or emergency.

Except for legal holidays, the bank shall, as soon as practicable, notify the Commission of the non-opening or closing period. In no case may the bank be required to comply with any other provision of law regarding the closing or reopening of banks or financial institutions. Any act which could not be executed because of the closing may be performed on the next succeeding business day that the main office or branch is reopened for business. Any other provision or rule of law notwithstanding, no liability or loss of rights of any kind on the part of any person, firm, or corporation, or of such bank, may accrue or result by virtue of the non-opening or closing.

In the event of an emergency or natural disaster affecting a bank's community, a bank may, without notice or advance permission from the Commission, temporarily extend its banking hours for the public convenience during the term of the emergency and disaster. In the event of an emergency or natural disaster, the Commission may waive any provision under this Title to provide for the continued access to banking facilities.

5.17. Change in banking hours - Notice to Commission.

If any bank adopts new hours of operation for its daily business to customers, it shall inform the Commission prior to the effective date of the change.

5.18. Bad debts--Maximum time allowed before charge-off--Overdraft not allowed as asset.

Any debt due to any bank on which the interest is past due and unpaid for a period of one year, unless the debt is well secured or in process of collection, shall be considered a bad debt and be charged to the reserve for loan and lease losses. In no case may an overdraft be held as an asset by any bank for a period of time longer than that set by the rules of the Commission.

5.19. Purchase of retail installment contract--Terms and effect of agreement.

A bank may purchase or acquire or agree to purchase or acquire, from any seller, any retail or other installment contract on such terms and conditions and for such price as may be agreed upon between them. Any such agreement does not give rise to any agency relationship between the bank and such seller, neither being agent nor principal of the other.

5.2. Leasing of personal property by bank--Terms and conditions.

A bank may, on its own behalf or through a designated subsidiary, acquire and lease to others personal property pursuant to a written lease.

5.21. Factoring--Applicability of lending limit provisions.

A bank may engage in the business of purchasing open accounts. Where a bank purchases open accounts but the seller agrees to repurchase such accounts upon default, the seller's obligation to repurchase shall be taken into consideration in computing the bank's lending limit to the seller. Such obligation shall be measured by the total unpaid balance of the open accounts owned by the bank less the applicable seller's reserves against defaulted open accounts, if any. Where the seller's obligation to repurchase is limited, it shall be measured by the total amount of the open accounts which the seller may ultimately be obligated to repurchase.

Where no more than the agreed percentage of the price paid for such open accounts is retained and credited to a reserve to be held as a form of collateral security, and where the bank has no direct or indirect recourse against the seller for uncollectibility, neither the reserve nor the obligations of the parties liable on such accounts constitute obligations of the seller subject to the lending limit.

5.22. Bank investments--Restrictions set by rule--Limitations.

A bank may purchase for its own account investment securities and registered funds that invest exclusively in securities of the United States or its agencies and annuities as defined in § 5.22.1

under such limits and restrictions as the Commission may prescribe by rule. In no event may the total amount of the investment securities of any one obligor or maker held by the bank for its own account exceed twenty percent of the capital stock and surplus and ten percent of the undivided profits of such bank except as provided in § 5.23.

5.22.1. Annuity defined.

For the purposes of § 5.22, an annuity is an investment that credits interest from the inception of the contract, has an interest guarantee period that may be from thirty days to one year in length, and is backed by the assets of the insurer. The insurer shall be rated in the top three categories of both Standard and Poor's Corporation and Moody's Investors Service. The annuity shall be fully liquid and not be subject to any surrender charge.

5.23. Exceptions to investment limitation.

A bank may, without limitation as to capital stock and surplus, purchase bonds, notes, debentures, or other obligations issued by or the payment of which is guaranteed by the Nation; the United States government, or any agency or subdivision thereof; any federally recognized Indian Tribe; any state, territorial, or insular possession of the United States; or any county, city or town, municipality, or other political subdivision, if such bonds, notes, debentures, or obligations are general obligations of the issuing authority. A bank may, without such limitation purchase bonds or notes which are fully defeased as to principal and interest. The Banking Commission may by rule grant additional investment exceptions.

5.24. Restricted investment in mortgage banking companies authorized.

Any bank may purchase and own stock and capital notes or other evidence of debt issued by a mortgage banking company, or its affiliate, the principal business of which is the extension of short, intermediate, or long-term credit to individuals, partnerships and corporations, which credit is secured by real estate mortgages. A bank may not obligate more than thirty percent of its capital stock and surplus and undivided profits for such purpose.

5.25. Banks authorized to make or purchase loans secured by real estate mortgages--Sale of loans to federal agencies--Capital contributions.

A bank or other banking organization may make real estate mortgage loans in any form, including but not limited to variable rate mortgages, collateral real estate mortgages, renegotiated rate mortgages, and shared appreciation mortgages, unless otherwise prohibited by law and may, notwithstanding any other provision of law, sell such mortgage loans to agencies of the federal government, a corporation chartered by an act of Congress, or any successor thereof, and in connection therewith may make payments of any capital contributions required pursuant to law, in the nature of subscriptions for stock and may receive stock evidencing such capital contributions, and hold or dispose of such stock.

5.26. Investment in federally sponsored housing loans.

Banks and trust companies authorized to do business under this Title that are approved or certified by agencies of the federal government may:

(1) Make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the federal agencies and to obtain such insurance;

(2) Make such loans, secured by real property or leasehold, as the federal agencies insure or makes a commitment to insure and to obtain such insurance.

5.27. Restrictions on purchase of cash value life insurance contracts.

A bank may purchase cash value life insurance contracts under such limits and restrictions as the Commission may prescribe.

5.28. Access to motor vehicle title and lien information on Nation's computer system.

Any bank may be provided access to motor vehicle Title and lien information maintained on the Nation's computer system in accordance with the Nation's procedures for access availability. The Nation may deny or revoke authority previously granted for accessing this information if the information accessed is used for any unlawful purpose or any reason unrelated to the business of the bank.

5.29. Contracts for services.

Unless prohibited by another provision of statute, a financial institution, known as the customer institution, may contract with another financial institution, known as the service institution, to grant the service institution the authority to render services to the depositors, borrowers, or other customers of the customer institution, after notice of the proposed contract is given to the Commission and the Commission does not object to the contract within thirty days of the notice. A contract may include authority to conduct transactions at or through any principal office, branch, or detached facility of either financial institution which is party to the contract. For the purposes of this section, the service institution is not considered a branch of the customer institution.

5.3. Debt cancellation contracts and debt suspension contracts--Fee.

A bank may enter into debt cancellation contracts and debt suspension contracts and charge a fee for those contracts in connection with any extension of credit that it makes to its customers.

CHAPTER 6

TRUST BUSINESS OF BANKS

Section Titles

6.14 Deposit of federally guaranteed securities with Federal Reserve bank.

6.15 Records of depositor to show ownership of securities--Transfers by book entries.

6.16 Custodian to certify deposited securities to fiduciary--Duty of fiduciary.

6.17 Oath or bond not required of bank to qualify as fiduciary.

6.18 Nominees used by bank acting as fiduciary or cofiduciary.

6.19 Deposit in clearing corporation of securities held as fiduciary or custodian.

6.20 Ownership of stock in clearing corporation not required for deposit of securities by fiduciary or custodian.

6.21 Holding in bulk of securities deposited in clearing corporation--Merger of certificates.

6.22 Records of securities deposited in clearing corporation--Transfer by book entry--Certification to interested party of securities held.

6.23 Approval or ratification of acceptance or relinquishment of fiduciary accounts by board of directors or committee.

6.24 Supervision of investment of fiduciary funds by committee designated by board of directors.

6.25 Reports of committees designated to supervise fiduciary accounts.

6.1. Use of "trust" in name restricted--Exercise of trust powers restricted--Misdemeanor.

No person may assume or use the word "trust" in such person's name in any manner which infers or suggests that the person has authority to transact such business unless the person is authorized to transact trust business pursuant to this Title. A violation of this paragraph is a misdemeanor.

No bank may exercise trust powers unless it is so authorized by its articles of incorporation and approved by the Commission and it has qualified by making the deposit required by § 6.4. Any person who exercises trust powers in violation of this section is guilty of a misdemeanor.

6.1.1. Powers of banks engaging in trust business.

Banks engaging in the trust business pursuant to this chapter have all powers necessary and incidental to carrying on the trust business, including:

(1) Acting as agent, custodian, or attorney-in-fact for any person, and, in such capacity, taking and holding property on deposit for safekeeping and acting as general or special agent or attorney-in-fact in the acquisition, management, sale, assignment, transfer, encumbrance, conveyance, or other disposition of property, in the collection or disbursement of income from or principal of property and, generally in any matter incidental to any of the foregoing;

(2) Acting as registrar or transfer agent for any corporation, partnership, association, municipality, state, or public authority, and in such capacity, receiving and disbursing money, transferring, registering, and countersigning certificates of stock, bonds or other evidences of indebtedness or securities and performing any and all acts which may be incidental thereto;

(3) Acting as trustee or fiduciary under any mortgage or bond issued by a person;

(4) Acting as trustee or fiduciary under any trust established by a person;

(5) Acting as fiduciary, assignee for the benefit of creditors, receiver or trustee under or pursuant to the order or direction of any court or public official of competent jurisdiction;

(6) Acting as fiduciary, guardian, conservator, assignee, or receiver of the estate of any person and as executor of the last will and testament or administrator, fiduciary or personal representative of the estate of any deceased person when appointed by a court or public official of competent jurisdiction;

(7) Establishing and maintaining common trust funds or collective investment funds; or

(8) Acting in any fiduciary capacity and performing any act as a fiduciary which a trust company organized under this Title may perform.

6.1.2. "Trust business" defined.

Trust business is engaging in, or holding out to the public as willing to engage in, the business of acting as a fiduciary for hire, except that no abstractor, accountant, attorney, credit union, insurance broker, insurance company, investment advisor, real estate broker or sales agent, savings and loan association, savings bank, securities broker or dealer, real estate title insurance company or real estate escrow company shall be deemed to be engaged in a trust business with respect to fiduciary services customarily performed by them for compensation as a traditional incident to their regular business activities.

6.2. Bank as trustee or custodian for retirement benefit plans.

Pursuant to rules of the Commission and the terms of applicable federal law and regulations, a bank may act as trustee or custodian for individual retirement accounts, HR 10 Keogh accounts or both such accounts, or any other pension, profit-sharing, money purchase, or other retirement benefit plan.

6.3. Fiduciary authority of bank authorized by charter to exercise trust powers.

A bank authorized to exercise trust powers may act as fiduciary in any capacity, including, but without limitation, registrar or transfer agent, fiscal agent, or attorney in fact, and as having the power to receive and apply sinking funds.

6.4. Deposit required to do trust business--Amount and form of deposit--Disposition of income.

Any bank empowered by its articles of incorporation to do trust business shall, before transacting any such business, deposit and keep on deposit with the Commission evidences of indebtedness acceptable to the Commission which are payable to bearer or recorded in the name of the Commission and which constitute readily marketable legal investments for funds held by a bank as fiduciary in the amount of one hundred thousand dollars. Such deposit shall be for the security of the trust creditors of such bank or trust company, and shall be in bonds or notes and mortgages on real property worth double the amount secured thereby, or insured by the federal housing administration, or bonds of the United States, or any state of the United States that has not defaulted on its principal or interest within ten years, or any organized county or township or first or second class municipality or school district of any state, and upon which there has been no default in payment of interest or principal. Income from such securities shall belong to and be paid the bank or trust company as long as it continues to conduct its business in the ordinary course and so long as authorized by the Commission.

6.5. Deposit available for satisfaction of claims upon liquidation, abandonment of trust powers, or resignation from fiduciary positions.

Upon liquidation, abandonment of trust powers, or resignation from all fiduciary positions, the deposit shall be made available by the Commission for the reasonable satisfaction of claims involving fiduciary accounts. Any surplus remaining after the satisfaction of all such claims shall be returned to the bank or trust company.

6.6. National banks' authority to engage in trust business--Examination of trust business--Acceptance of federal examination.

It is lawful for any national bank to engage in trust business to the extent authorized by the laws of the United States, without incorporating or organizing under the laws of the Nation, but a national bank shall otherwise comply with and be subject to all laws of the Nation that are applicable to state banks engaged in trust business including such examinations as may be

deemed necessary, except that the authority of the Commission shall apply to their trust business only. The Commission may accept in lieu of an examination conducted under the Commission's direction, any report of examination conducted by the appropriate federal regulatory agency.

6.7. Foreign bank or trust company to comply with requirements to act as fiduciary--Violation as misdemeanor.

No bank or trust company organized and doing business under the laws of any state or territory of the United States of America, or of the District of Columbia, or a national bank doing business in any other state, territory, or district, may act in a fiduciary capacity in the jurisdiction of the Nation except pursuant to the provisions of §§ 6.8 to 6.10, inclusive. A violation of this section is a misdemeanor.

6.8. Reciprocal privileges extended to foreign bank or trust company acting as fiduciary.

A bank or trust company organized and doing trust business under the laws of any state or territory of the United States of America, including the District of Columbia, and a national bank, duly authorized so to act, may be appointed and may serve as trustee, whether of a corporation or personal trust, personal representative, guardian, conservator, or committee for an incompetent person, or in any other fiduciary capacity, whether the appointment is by will, deed, court order, or decree, or otherwise, when and to the extent that the state, territory, or district in which the bank or trust company is organized or has its principal place of business grants authority to serve in like fiduciary capacities to a bank or trust company organized and doing business under the laws of the Nation.

6.9. Filing with the Commission by foreign bank or trust company acting as fiduciary--Designation as agent to receive process--Service of process.

Before qualifying or serving in any fiduciary capacity, the bank or trust company shall file with the Commission a copy of its charter certified by its secretary under its corporate seal, and a power of attorney designating the Commission as the entity upon whom all notices and processes issued by any court of the Nation may be served in any action or proceeding relating to any trust, estate, or matter within this jurisdiction in respect of which the bank or trust company is acting in any fiduciary capacity with like effect as personal service on the bank or trust company. The power of attorney is irrevocable so long as any liability remains outstanding against the bank or trust company in this jurisdiction.

6.1. Establishment of place of business not permitted or prohibited by filing requirements.

The provisions of §§ 6.7 to 6.9, inclusive, may not be construed to prohibit, permit, or affect in any other way, the right of a bank or trust company, organized and doing business under the laws of any other state, territory, or district, including a national bank doing business in any

state, to establish in this jurisdiction a place of business, branch office, or agency for the conduct of business as a fiduciary.

6.11. Investment powers of trust company.

A bank exercising trust powers shall have the same investment powers as an individual fiduciary under like circumstances.

6.12. Voting of bank shares by cotrustee.

Shares of its own stock held by a bank and one or more persons as trustees may be voted on by such other person or persons, as trustees, in the same manner as if he or they were the sole trustee.

6.13. Segregation of assets held by bank as fiduciary.

A bank holding any asset as fiduciary, shall:

(1) Segregate all such assets from any other assets of the bank and from the assets of other trusts, except as may be expressly provided otherwise by law or by the writing creating the trust.

(2) Record such assets in a separate set of books maintained for fiduciary activities.

6.14. Deposit of federally guaranteed securities with Federal Reserve bank.

Any bank, when holding securities as custodian for a fiduciary may deposit, or arrange for the deposit, with the Federal Reserve bank in its district of any securities the principal and interest of which the United States or any department, agency, or instrumentality of the United States has agreed to pay, or has guaranteed payment, to be credited to one or more accounts on the books of the Federal Reserve bank in the name of the bank. Any account used for this purpose shall be designated as a fiduciary or safekeeping account, and other similar securities may be credited. A bank depositing securities with a Federal Reserve bank is subject to such rules and regulations with respect to the making and maintenance of such deposit, as the Commission, and, in the case of national banking associations, the United States Comptroller of the Currency, may from time to time issue.

6.15. Records of depositor to show ownership of securities--Transfers by book entries.

The records of the bank must at all times show the ownership of the securities held in such account. Ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of the Federal Reserve bank without physical delivery of any securities.

6.16. Custodian to certify deposited securities to fiduciary--Duty of fiduciary.

A bank acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by the bank with the Federal Reserve bank for the account of the fiduciary. A fiduciary shall, on demand by any party to which it must account or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary with the Federal Reserve bank for its account as the fiduciary.

6.17. Oath or bond not required of bank to qualify as fiduciary.

No oath or bond shall be required of a bank to qualify upon appointment as a fiduciary unless the instrument creating a fiduciary position expressly provides otherwise.

6.18. Nominees used by bank acting as fiduciary or cofiduciary.

Any bank, when acting as a fiduciary or a cofiduciary with others, or as an agent for other fiduciaries, may, with the consent of its cofiduciary or cofiduciaries, if any, who are hereby authorized to give such consent, or the fiduciaries for whom it is acting, cause any investment held in any such capacity to be registered and held in the name of a nominee or nominees of such bank. Such bank shall be liable for the acts of any such nominee with respect to any investment so registered. The records of such bank shall at all times show the trust for which any such investment is held and the securities shall be in the possession and control of such bank and be kept separate and apart from the assets of such bank.

6.19. Deposit in clearing corporation of securities held as fiduciary or custodian.

Any fiduciary holding securities in its fiduciary capacity, any bank holding securities as a custodian or managing agent, and any bank holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation or related clearing agency.

6.2. Ownership of stock in clearing corporation not required for deposit of securities by fiduciary or custodian.

This chapter shall apply to any fiduciary holding securities in its fiduciary capacity, and to any bank holding securities as a custodian, managing agent or custodian for a fiduciary, regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not the fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of the clearing corporation.

6.21. Holding in bulk of securities deposited in clearing corporation--Merger of certificates.

Securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination.

6.22. Records of securities deposited in clearing corporation--Transfer by book entry--Certification to interested party of securities held.

The records of the fiduciary and the records of the bank acting as custodian, as managing agent or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities. A bank so depositing securities is subject to the rules as the Commission and, in the case of national banking associations, the United States Comptroller of the Currency may from time-to-time issue. A bank acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by the bank in the clearing corporation for the account of the fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as the fiduciary.

6.23. Approval or ratification of acceptance or relinquishment of fiduciary accounts by board of directors or committee.

No bank shall accept or voluntarily relinquish a fiduciary account without the approval or ratification of the board of directors, or a committee of officers or directors designated by the board for that purpose, but the board or the committee may prescribe general rules governing acceptance or relinquishment of fiduciary accounts, and action taken by an officer in accordance with these rules is sufficient approval.

6.24. Supervision of investment of fiduciary funds by committee designated by board of directors.

The board of directors shall designate one or more committees of not less than three qualified officers or directors to supervise the investment of fiduciary funds. No investment shall be made, retained, or disposed of without the approval of a committee. At least once each calendar year a committee shall review all assets of each fiduciary account and shall determine their current value, safety, and suitability and whether the investments should be modified or retained.

6.25. Reports of committees designated to supervise fiduciary accounts.

The committees referred to in this Chapter shall keep minutes of their meetings, and shall fully report to the board of directors at least once in each calendar quarter all action taken since their previous report.

CHAPTER 7

CREATION OF TRUST COMPANIES

Section Titles

7.18. Determining capital--Minimum--Purpose of capital--Fidelity bond and liability insurance policy.

7.19. Additional capital requirements--Safety and soundness factors to be considered--Effective date of order--Hearing.

7.19.1. Investments pledged for security of trust creditors of trust company--Amount--Income from investments--Pledge increase--Hearing.

7.19.2. Pledge available to satisfy claims upon liquidation, abandonment of trust powers, or resignation.

7.2. Payment of subscriptions--Reduction of common stock.

7.21. Transferring stock and ownership units.

7.22. Increasing capital stock or ownership units.

7.23. Registration of capital stock or ownership units.

7.24. Issuance and retirement of preferred stock.

7.25. Rights and liability of preferred stockholders--Dividends.

7.26. Issuance of convertible or nonconvertible capital notes or debentures.

7.27. Dividends not permitted from required capital.

7.28. Dividends from undivided profits or surplus.

7.29. Powers of trust company.

7.3. Retention of records--Promulgation of rules--Reproduction of records--Duty of confidentiality.

7.31. Periodic examination of trust company--Report of examination--Cooperative, coordinating and information-sharing agreements among agencies.

7.32. Examination of fiduciary affairs of officers or employees--Examination of affiliated companies or corporations.

7.33. Examination expenses paid by trust companies--Fees.

7.34. Annual report of trust company--Form of report--Request for additional reports.

7.35. Authority of trust company revoked upon obstruction, interference, or refusal to submit to examination.

7.36. Service of notice of charges--Contents of notice--Temporary cease and desist order.

7.37. Revocation of franchise for failure to comply with lawful requirements.

7.38. Hearing on revocation of trust authority.

7.39. Confidentiality of information generated by examination--Disclosure--Hearing.

7.4. Correction of unsafe or unsound condition or operation--Appointment of special assistant--Appeal of appointment.

7.41. Insolvency defined.

7.42. Commission to take charge of insolvent trust company--Appointment of special assistant.

7.43. Plan for reorganization of insolvent trust company.

7.44. Appointment of receiver--Bond--Qualifications--Report--Removal.

7.45. Powers and duties of receiver--Order of payment of liabilities.

7.45.1. Liability of receiver.

7.46. Periodic examination of trust company in the hands of a receiver.

7.46.1. Suspension, liquidation, order against unsound practice, removal of director or officer, or injunction.

7.46.2. Disclosure of confidential information in certain actions.

7.47. Acquisition of trust company--Notice--Approval--Order of disapproval--Hearing.

7.48. Contents of notice of proposed acquisition.

7.49. Reason for disapproval of acquisition.

7.5. Procedure for merger, consolidation, conversion, or transfer of assets and liabilities to another bank or trust company.

7.5.1. Proceedings to legally dissolve charter of acquired, merged, or consolidated trust company.

7.51. Necessity of execution or delivery of deed for merger or consolidation.

7.52. Fiduciary capacity of successor trust company.

7.53. Name of trust company--Name change.

7.54. Approval required for changing place of business--Examination and investigation.

7.55. Establishment of trust service offices--Application.

7.56. Membership in Federal Reserve bank.

7.57. Depositing securities into Federal Reserve bank.

7.58. Registering investments in name of nominee--Liability of trust company.

7.59. Common trust funds and collective investment funds.

7.6. Trust company receivership and liquidation captive insurance company fund.

7.1. Definitions.

Terms used in this chapter mean:

(1) "Articles," in the case of a corporation, articles of incorporation; in the case of a limited liability company, articles of organization;

(2) "Board member," in the case of a corporation, a director; in the case of a limited liability company, a member of the board of managers if manager-managed or board of members if member-managed;

(3) "Client," an individual, corporation, association, or other legal entity receiving or benefitting from fiduciary services provided by a trust company or bank;

(4) "Commission," the Banking Commission;

(5) "Control," the power, directly or indirectly, to direct the management or policies of a trust company or to vote twenty-five percent or more of any class of voting shares of a trust company;

(6) "Fiduciary for hire," acting as an administrator, conservator, custodian, executor, guardian, personal representative, or trustee, for any person, trust, or estate for compensation or gain or in anticipation of compensation or gain;

(7) "Financial institution," any bank, national banking association, savings and loan association, or savings bank which conducts business within the Nation's jurisdiction but which does not have trust powers, or which has trust powers, but does not exercise those trust powers;

(8) "Governing board," in the case of a corporation, the board of directors; in the case of a limited liability company, the board of managers if manager-managed or board of members if member-managed;

(9) "Out-of-state trust institution," a non-depository corporation, limited liability company, or other similar entity chartered or licensed by the banking regulatory agency of a state, territory, or district, other than the Catawba Nation, to engage in the trust company business in that state, territory, or district under the primary supervision of such regulator;

(10) "Owner," in the case of a corporation, a common stockholder; in the case of a limited liability company, a person who owns ownership units;

(11) "Person," an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, or any other form of an entity;

(12) "Public trust company," a trust company that engages in trust company business with the general public by advertising, solicitation, or other means, or a trust company that engages in trust company business but does not fall within the definition of a private trust company established by the Commission. The Commission shall consider the size, number of clients served and the family and other relationships among the clients served, complexity, and related safety and soundness issues as it establishes in rule a definition for the term private trust company;

(13) "Trust company," a non-depository trust company engaged in the trust company business;

(14) "Trust company business," engaging in, or representing or offering to engage in, the business of acting as a fiduciary for hire, except that no accountant, attorney, credit union, insurance broker, insurance company, investment advisor, real estate broker or sales agent, savings and loan association, savings bank, securities broker or dealer, real estate title insurance company, or real estate escrow company may be deemed to be engaged in a trust company business with respect to fiduciary services customarily performed by them for compensation as a traditional incident to their regular business activities. Trust company business as defined in this chapter does not constitute banking as defined in this Title;

(15) "Trust service office," any office, agency, or other place of business at which the powers granted to trust companies are exercised either by a trust company other than the place of business specified in a trust company's certificate of authority or within the Nation’s jurisdiction by an out-of-state trust institution.

7.2. Confidential information.

For the purposes of this chapter, confidential information includes the names of stockholders or owners, names and addresses of the members of a private trust company's governing board, ownership information, capital contributions, addresses, business affiliations, findings through any examination or inquiry of any kind, and any information required to be reported or filed with the Commission, and any information or agreement relating to any merger, consolidation, or transfer.

7.3. "Community" defined.

For the purposes of this chapter, community shall be broadly construed and shall include geographic or market-based parameters, or both.

7.4. Application for incorporation--Approval procedure--Emergency procedure.

No trust company may be incorporated or organized or transact trust company business in the Nation's jurisdiction until the application for its incorporation or organization and application or authority to do business and the location of its principal office have been submitted to and approved by the Commission under the same procedure for bank applications, except that conditions for considering an application involving a trust company shall be as set forth in this chapter. The Commission shall prescribe the form for making an application and any application submitted shall contain such information as required. The applicant may, with approval of the Commission, designate confidential information.

If upon the dissolution or insolvency of any trust company, it is the opinion of the Commission that by reason of the loss of services in the community, an emergency exists which may result in serious inconvenience or losses to customers or it is in the public interest of the community, the Commission may accept and approve an application for incorporation or organization and an application for authority to do business without prior notice. Upon approval of an application by the Commission for authority to do business of a successor trust company, the Commission may call a special meeting for review of the application.

7.5. Considerations in ruling on application-Proceedings on application.

In ruling on an application required under this chapter, the Commission shall consider the following:

(1) The financial standing, general business experience, and character of the organizers or incorporators of the applicant;

(2) The character, qualifications, and experience of the officers of the applicant;

(3) The applicant's ability to serve the community or clients as described in the application; and

(4) The prospects for success of the proposed trust company.

If the Commission determines any of these conditions unfavorable to the applicant, then the application shall be disapproved; otherwise the application shall be approved.

7.5.1. Notice of material omission in application or change in facts reported in application.

Any trust company shall immediately notify the Commission of any material omission from the application or any material change in the facts reported in an application, either of which could have led to an unfavorable finding with respect to the criteria established in this chapter. Failure to notify the Commission may subject the trust company to revocation proceedings or other regulatory action as provided in this Title. The Commission shall give notice of the revocation or other regulatory action to the president or other managing officer of the trust company.

7.6. Application fee.

All applications for charters under this chapter shall include a nonrefundable application fee established by the Commission.

7.7. Organization of public and private trust companies--Submission and approval of articles--Required information.

Any three or more persons may organize a public trust company and make and file articles for its organization and operation. Any one or more persons may organize a private trust company and make and file articles for its organization and operation. No trust company may be organized or incorporated to engage in business as such until the articles have been submitted and approved by the Commission. The name selected for the trust company shall include the word, trust, and may not be the name of any other trust company doing business in the Nation's jurisdiction. The Commission shall accept or reject the name. However, the approval of a trust company name by the Commission shall not supersede any person's rights pursuant to applicable trademark law. The articles, in addition to any other information required by law, shall state:

(1) That the corporation or limited liability company is formed for the purpose of engaging in the trust company business; and

(2) The period for which such corporation or limited liability company is organized, which may be perpetual.

The articles may contain any other provisions as are consistent with law. The articles shall be subscribed by one or more of the organizers of the proposed trust company and shall be acknowledged by them. The full amount of the capital required by the Commission shall be subscribed before the articles are filed.

7.7.1. Corporation laws applied.

All provisions of law applicable to a corporation and a limited liability company are applicable to a trust company, except where inconsistent with this chapter and the provisions of this Title, in which case this chapter and the provisions of this Title govern.

7.8. Amendment of articles--Extension of existence.

Prior to the expiration of the period for which it was incorporated or organized a trust company may, with the approval of at least a majority of the capital stock or ownership units of such trust company, amend its articles to extend its existence for an additional period, which may be perpetual.

7.9. Starting date of trust company existence--Commencement of business.

The existence of any trust company shall date from the filing of its articles from which time it shall have and may exercise the incidental powers conferred by law upon corporations or limited liability companies, as applicable. However, no trust company may transact any business except the election of officers, the taking and approving of their official bonds, the receipts of payment upon stock subscriptions, and other business incidental to its organization, until it has secured the required approval and the authorization of the Commission to commence business.

7.1. Statement of payment of capital--Certificate of organization.

When the capital of any trust company is paid in, the president or cashier shall transmit to the Commission a verified statement showing the names and addresses of all owners, the amount of stock or units each subscribed, and the amount paid in by each. The Commission shall review each trust company as to the amount of money paid in for capital and surplus, by whom the amounts were paid, the amount of capital stock or units owned in good faith by each owner, and whether the trust company has complied with the law. If the Commission determines that the trust company has been organized as required by law, has complied with the law, and has secured the required approval, the Commission shall issue a certificate stating that the trust company has been organized and its capital paid in as required by law, and that the trust company is authorized to transact trust business.

7.11. Authority to transact business required--Violation as misdemeanor.

No individual, firm, or corporation may advertise, publish, or otherwise promulgate that they are engaged in the trust company business, or transact trust company business, without having first obtained authority from the Commission. Any individual or member of any firm or officer of any corporation violating this section shall be guilty of a misdemeanor.

7.12. List of owners--Annual submission to Commission--Verification of list.

Every trust company shall keep a full and correct list of names and addresses of all of its owners and the number of shares owned by each. This list of owners shall be kept and maintained to be readily available for inspection by all owners. The president or cashier of any trust company shall submit to the Commission on or before the thirty-first day of January of each year a list of owners as of the first day of the calendar year. The president or cashier shall verify the correctness of the list under oath.

7.13. Governing board--Membership--Election--Vacancies.

The business of any trust company shall be managed and controlled by its governing board and includes the authority to provide for bonus payments, in addition to ordinary compensation, for any of its officers and employees. The governing board of a private trust company shall consist of not less than three members, all of whom shall be elected by the owners of the trust company

at any regular annual meeting. The governing board of a public trust company shall consist of not less than five members, all of whom shall be elected by the owners of the trust company at any regular meeting held during each calendar year. The board members shall be elected, and any vacancies filled in the manner as provided in the provisions regarding general corporations or limited liability companies, as applicable.

7.14. Officers of governing board--Bond required.

The governing board may elect a chairperson, a president, one or more vice presidents, a secretary, and a cashier. The office of president and cashier may not be filled by the same person. The officers shall hold their offices for a term not to exceed one year and until their successors are elected and qualified. The governing board shall require all officers and employees having the care or handling of the funds of the trust company to give a good and sufficient bond to be executed by an approved corporate surety authorized to do business in the Nation's jurisdiction. The amount and form of the bond shall be approved by the governing board and the Commission, and it shall be held by the Commission. The costs of the bonds shall be paid by the trust company.

7.15. Meetings of governing board--Examination and audit of books and records.

The governing board shall hold at least four regular meetings each year, at least one of which shall be held during each calendar quarter. Unless otherwise provided in the trust company's organizational documents, the governing board or an authorized committee may conduct, or permit any member to participate in, a regular or special meeting through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is considered present in person at the meeting. The governing board or an auditor selected by them shall make a thorough examination of the books, records, funds, and securities held by the trust company at each of the quarterly meetings. The result of the examination shall be recorded in detail. If the governing board selects an auditor, the auditor's findings shall be reported directly to the governing board. In lieu of the required four quarterly examinations, the governing board may accept one annual audit by a certified public accountant, or an independent auditor approved by the Commission.

7.16. Oath of board members.

Each board member shall take and subscribe an oath that the member will administer the affairs of the trust company diligently and honestly and that the member will not knowingly or willfully permit any of the laws relating to trust companies to be violated.

7.17. Persons convicted of certain crimes ineligible to serve as board member, officer, or key employee--Civil penalty--Criminal background investigation.

Except with the written consent of the Commission, no person may serve as a board member, officer, or key employee of a trust company who has been convicted of any felony or any crime involving fraud, dishonesty, or a breach of trust. Any trust company that willfully violates this prohibition is subject to a civil penalty of one thousand dollars for each day the violation continues.

As part of any application to obtain authority to transact business as a private trust company, the applicant shall obtain and provide for each proposed incorporator, organizer, board member, manager, officer, and key employee of the proposed company, as applicable, the results of an independent criminal background investigation acceptable to the Commission, and independent credit report from a consumer reporting agency, and a report of ongoing or pending litigation.

As part of any application to obtain authority to transact trust company business as a public trust company, each proposed incorporator, organizer, board member, manager, officer, and key employee, as applicable, shall submit to a criminal background investigation specified by the Commission. For any person described above who is not a citizen of the United States, the Commission may conduct an international background investigation or require the applicant or person to obtain and provide the results of an international background investigation acceptable to the Commission. The applicant shall also obtain and provide the results of an independent credit report, and a report of ongoing or pending litigation for each person as described above.

Prior to beginning employment with any trust company, each potential director, manager, member, officer, or key employee shall undergo the same investigation process as required above for new applicants. At the discretion of the Commission, any person subject to the requirements of this section may enter into service on a temporary basis pending receipt of results from the criminal background investigation. For purposes of this section, a key employee does not include an employee whose primary responsibilities are limited to clerical or support duties, and officer does not include any person who is not involved in the ongoing policy making or management of the trust company.

Any trust company shall immediately notify the Commission of any material change in the background of any person subject to the background investigation process as described above.

The Commission may require a fingerprint-based state, federal, and international criminal background investigation, as applicable, for any director, officer, or employee, who is the subject of an investigation by the Commission. Failure to submit to or cooperate with the criminal background investigation is grounds for the denial of an application or may result in the revocation of a trust company's authority to transact trust company business.

The applicant or trust company, as the case may be, shall pay any fees or costs associated with the fingerprinting, background investigations, or reports required by this section. A person who has undergone a state, federal, or international background investigation required by this section, may, at the discretion of the Commission, be allowed to fulfill this requirement for future

trust company employment by sworn affidavit stating that there have been no material changes to the person's background.

7.18. Determining capital--Minimum--Purpose of capital--Fidelity bond and liability insurance policy.

For purposes of this section, the capital of a trust company is the total of the aggregate par value of its outstanding shares of capital stock or ownership units, its surplus, and its undivided profits. The Commission may require the trust company have capital in an amount the Commission determines the nature of the anticipated business of the trust company and the safety of the customers so require. This chapter recognizes that capital for a trust company serves a different purpose than does capital for a bank. It is not intended that capital requirements for trust companies be judged by the same standards as banks. Basic protection for fiduciary clients of a trust company shall be provided by the purchase of a fidelity bond and a director's and officer's liability insurance policy. The bond and insurance shall be in an amount of not less than one million dollars each. The trust company shall give notice of cancellation or nonrenewal of the bond or insurance policy to the Commission within ten days of the receipt of cancellation or nonrenewal. Except as may be provided elsewhere in this chapter, no trust company may reduce voluntarily its capital stock or ownership units or surplus below the amount required in this section.

7.19. Additional capital requirements--Safety and soundness factors to be considered--Effective date of order--Hearing.

The Commission may require additional capital for an existing trust company if the Commission finds the condition and operations of an existing trust company requires additional capital consistent with the safety and soundness of the trust company. The safety and soundness factors to be considered in the exercise of such discretion include:

(1) The nature and type of business conducted;

(2) The nature and degree of liquidity in assets held in a corporate capacity;

(3) The amount of fiduciary assets under management or administration;

(4) The type of fiduciary assets held and the depository of such assets;

(5) The complexity of fiduciary duties and degree of discretion undertaken;

(6) The competence and experience of management;

(7) The extent and adequacy of internal controls;

(8) The presence or absence of annual unqualified audits by an independent certified public accountant;

(9) The reasonableness of business plans for retaining or acquiring additional capital;

(10) The existence and adequacy of insurance obtained or held by the trust company for the purpose of protecting its clients, beneficiaries, and grantors; and

(11) Any other factor deemed relevant by the Commission.

The proposed effective date of an order requiring an existing trust company to increase its capital must be stated in the order as on or after the thirty-first day after the date of the proposed order. Unless the trust company requests a hearing before the Commission in writing before the effective date of the proposed order, the order becomes effective and is final.

7.19.1. Investments pledged for security of trust creditors of trust company--Amount--Income from investments--Pledge increase--Hearing.

Before any trust company authorized by this Title transacts any trust company business, the trust company shall pledge to the Commission, and maintain at all times, investments for the security of the trust creditors of the trust company, including as a priority claim costs incurred by the Commission in a receivership or liquidation of the trust company if the trust company should fail. The Commission shall determine the amount of the pledge in an amount deemed appropriate to defray the costs incurred in a receivership or liquidation of the trust company. The Commission may require an increase or authorize a reduction of any previously established pledge as the Commission deems appropriate, and all costs associated with pledging and holding the investments are the responsibility of the trust company.

The Commission may promulgate rules to establish additional investment guidelines or investment options for purposes of the pledge required by this section.

In the event of a receivership of a trust company, the Commission may, without regard to priorities, preferences, or adverse claims, reduce the pledged investments to cash and, as soon as practicable, utilize the cash to defray the costs associated with the receivership.

Income from the investments pledged shall belong to and be paid to the trust company so long as the trust company continues to conduct its business in the ordinary course and so long as authorized by the Commission.

If the Commission requires a trust company to increase its pledge, it shall provide the trust company with notice and an order setting forth the amount of the pledge. The proposed effective date of the order setting forth the amount of the pledge shall be stated in the order as on or after the thirty-first day after the date of the order. Unless the trust company requests a hearing

before the Commission in writing before the proposed effective date of the order, the order is effective and final on the proposed effective date.

7.19.2. Pledge available to satisfy claims upon liquidation, abandonment of trust powers, or resignation.

Upon liquidation, abandonment of trust powers, or resignation from all duties exercised, the pledge required by this chapter shall be made available for the reasonable satisfaction of claims involving trust company accounts. Any surplus remaining after the satisfaction of all such claims and costs incurred by the Commission shall be returned to the trust company. Unless the Commission has reason to believe that claims are forthcoming, the Commission shall release any pledge no later than twelve months from the date all affected accounts are moved to a successor trustee, custodian, or administrator.

7.2. Payment of subscriptions--Reduction of common stock.

All subscriptions to the stock or ownership units shall be paid in cash. If a trust company in corporate form reduces its common stock and issues preferred stock in lieu of the reduction, it may reduce the par value of the common stock in the proportion that the total amount of capital stock is reduced, but when the preferred stock is retired the par value of the common shares shall be restored.

7.21. Transferring stock and ownership units.

The shares of stock and ownership units of any trust company are personal property and shall be transferred on the books of the trust company in such manner as the bylaws or operating regulations of the trust company may direct. No stock or ownership units may be transferred on the books of the trust company when the trust company is in a failing condition, or when its capital is impaired, except upon approval of the Commission. If a transfer of shares of stock of any trust company, or holding company that owns a majority of the outstanding shares of a trust company, occurs which results through direct or indirect ownership by a stockholder or an affiliated group of stockholders of ten percent or more of the outstanding stock of the trust company, or holding company that owns a majority of the outstanding shares of a trust company, and if additional shares of stock of the trust company are transferred to such stockholders, affiliated group of stockholders, or holding company, the president or other chief executive officer of the trust company shall report the transfer to the Commission within ten days after transfer of the shares of stock on the books of the trust company.

7.22. Increasing capital stock or ownership units.

The capital stock or ownership units of any trust company may be increased. The president and cashier shall forward a certified statement to the Commission showing the amount of the increase, the names and addresses of the subscribers, the amount subscribed by each, and that the same had been paid in full to the trust company.

7.23. Registration of capital stock or ownership units.

If the Commission determines that the capital stock of any trust company is impaired, the Commission shall notify the trust company to restore the capital stock or ownership units within ninety days of receipt of the notice. Within fifteen days of receipt of the notice, the governing board of the trust company shall levy an assessment on the owners sufficient to restore the capital stock or ownership units. The trust company, with its governing board's approval, may reduce its capital stock or ownership units to the extent of the impairment, if such reduction will not reduce the capital below the amount required by this chapter.

7.24. Issuance and retirement of preferred stock.

Any trust company in corporate form may issue preferred stock of one or more classes in amounts approved by the Commission. The holders of two-thirds of the common stock of the trust company shall approve the issuance at a meeting held for that purpose. Notice shall be given by registered mail to each stockholder at least five days before the date of the meeting under this section. An issuance of preferred stock is not valid until the par value of all stock so issued is paid in. Preferred stock may be retired only if the trust company is in compliance with the capital requirements under this chapter following retirement of the preferred stock and if two-thirds of the holders of common stock of the trust company and the Commission approve the retirement.

7.25. Rights and liability of preferred stockholders--Dividends.

The holders of preferred stock are not liable for assessments to restore any impairment in the capital stock of a trust company. The holders of preferred stock are entitled to receive cumulative dividends, have voting and conversion rights, and have control of management, as may be provided in the articles of incorporation and upon the written approval of the Commission. The preferred stock shall be retired as provided in the articles of incorporation.

No dividends may be declared or paid on common stock until all cumulative dividends, if any, on the preferred stock have been paid, and if the trust company is dissolved or placed in liquidation, no payments may be made to the holders of common stock until the holders of the preferred stock first have been paid in full for any sums due upon the preferred stock.

7.26. Issuance of convertible or nonconvertible capital notes or debentures.

In accordance with normal business considerations and upon approval of owners owning two-thirds of the voting stock or ownership units of the trust company, the trust company may issue convertible or nonconvertible capital notes or debentures in such amounts pursuant to terms and conditions as approved by the Commission. However, the principal amount of capital notes or debentures outstanding at any time may not exceed an amount equal to one hundred percent of the trust company's paid-in capital stock or ownership units plus fifty percent of the

amount of its unimpaired surplus fund. Capital notes or debentures that are by their terms expressly subordinated to the prior payment in full of all liabilities of the trust company are part of the unimpaired capital funds of the trust company.

7.27. Dividends not permitted from required capital.

A trust company may not permit to be withdrawn, in the form of dividends, any portion of its capital required under this chapter.

7.28. Dividends from undivided profits or surplus.

The governing board of any trust company may declare dividends from undivided profits or surplus, if the trust company is in compliance with the capital requirements of this chapter following payment of the dividend and if the Commission approves any dividend to be paid from surplus.

7.29. Powers of trust company.

A trust company may exercise the following powers necessary or incidental to carrying on a trust company business, including:

(1) Act as agent, custodian, or attorney-in-fact for any person, and, in such capacity, take and hold property on deposit for safekeeping and act as general or special agent or attorney-in-fact in the acquisition, management, sale, assignment, transfer, encumbrance, conveyance, or other disposition of property, in the collection or disbursement of income from or principal of property, and generally in any matter incidental to any of the foregoing;

(2) Act as registrar or transfer agent for any corporation, partnership, association, limited liability company, municipality, state, or public authority, and in such capacity, receive and disburse money, transfer, register, and countersign certificates of stock, bonds, or other evidences of indebtedness or securities, and perform any acts which may be incidental thereto;

(3) Act as trustee or fiduciary under any mortgage or bond issued by a person;

(4) Act as trustee or fiduciary under any trust established by a person;

(5) Act as fiduciary, assignee for the benefit of creditors, receiver, or trustee under or pursuant to the order or direction of any court or public official of competent jurisdiction;

(6) Act as fiduciary, guardian, conservator, assignee, or receiver of the estate of any person and as executor of the last will and testament or administrator, fiduciary, or

personal representative of the estate of any deceased person when appointed by a court or public official of competent jurisdiction;

(7) Establish and maintain common trust funds or collective investment funds; or

(8) Act in any fiduciary capacity and perform any act as a fiduciary which a bank with trust powers may perform in the exercise of those trust powers.

7.3. Retention of records--Promulgation of rules--Reproduction of records--Duty of confidentiality.

A trust company shall retain its business records in accordance with the provisions of this section. Each trust company shall retain permanently the minute books of meetings of its owners and governing board, its capital stock and ownership unit ledger and capital stock or ownership unit certificate ledger or stubs, its general ledger or the record kept in lieu of a general ledger, its daily statements of condition, and all records which the Commission shall require to be retained permanently. All other records of a trust company shall be retained for such periods as the Commission prescribes. The periods may be permanent or for a term of years. Before adoption, amendment, or revocation of rules pertinent to this section the Commission shall consider:

(1) Actions and administrative proceedings in which the production of trust company records might be necessary or desirable;

(2) Statutes of limitation applicable to such actions or proceedings;

(3) The availability of information contained in trust company records from other sources; and

(4) Any other matters as the Commission considers pertinent to the interest of customers and owners of trust companies and of the public having the records available.

Any trust company may destroy any record which has been retained for the period prescribed, in accordance with the terms of this section for retention of records of its class, and is, after it has destroyed a record, under no duty to produce the record.

Instead of retention of the original records, any trust company may cause any of its records in its custody, including those held by it as a fiduciary, to be photographed, digitized, or otherwise reproduced to permanent form. Any reproduction has the same force and effect as the original and may be admitted in evidence equally with the original.

Any trust company may cause any transactions, information, and data occurring in the regular course of its operations to be recorded and maintained by electronic means. When the electronic records of the transactions, information, and data are converted to writing, the

writings shall constitute the original records of the transactions, information, and data and have the force and effect of the original records.

Nothing in this section may be construed to affect any duty of a trust company to preserve the confidentiality of its records.

7.31. Periodic examination of trust company--Report of examination--Cooperative, coordinating and information-sharing agreements among agencies.

The Commission shall examine each trust company at least once every thirty-six months or more frequently if necessary to make a full and careful examination and inquiry into the condition of the affairs of the trust company. For purposes of the examination, the Commission may administer oaths and examine under oath the board members, officers, employees, and agents of any trust company. The examination shall be reduced to writing by the person making it, and the person's reports shall contain a full, true, and careful statement of the condition of the trust company. The Commission, in lieu of making a direct examination and inquiry at the trust company office, may examine the trust company in whole or in part by examining the trust company records or documents off-site. For an examination conducted wholly or partially off-site, the Commission may require production of any records or documents of the trust company at the Commission office. The Commission shall provide a copy of the written examination report to the governing board of the trust company.

The Commission may examine an out-of-state trust institution's trust service offices either on- or off-site to determine whether such offices are being operated in compliance with the laws of the Nation and in accordance with safe and sound practices.

The Commission may enter into cooperative, coordinating, and information-sharing agreements with any other supervisory agency or any organization affiliated with or representing one or more supervisory agencies with respect to the periodic examination or other supervision of any trust company or out-of-state trust institution, and may accept such agency's or organization's report of examination or investigation in lieu of conducting an examination or investigation.

7.32. Examination of fiduciary affairs of officers or employees--Examination of affiliated companies or corporations.

The Commission may examine the fiduciary affairs of any officer or employee of any trust company; and may examine any investment company or holding company or corporation that is affiliated with any trust company as to matters relevant to the safety and soundness of the trust company.

7.33. Examination expenses paid by trust companies--Fees.

The expense of every examination, together with the expense of administering the applicable laws, including salaries, travel expenses, supplies, and equipment, shall be paid by the trust companies under examination.

7.34. Annual report of trust company--Form of report--Request for additional reports.

Each trust company shall make at least one report to the Commission during each year, at a time determined by the Commission. The Commission may require additional reports from each trust company if the Commission considers it advisable. The form of all the reports shall be prescribed by the Commission. If the Commission considers it necessary, it may call upon any trust company for a report of its condition upon any given day.

7.35. Authority of trust company revoked upon obstruction, interference, or refusal to submit to examination.

If any officer of any trust company refuses to submit the books, records, papers, and instruments of the trust company to the examination and inspection of the Commission or in any manner obstruct or interfere with the examination and investigation of the trust company or refuse to be examined on oath concerning any of the affairs of the trust company, the Commission may revoke the authority of the trust company to transact business and may institute proceedings for the appointment of a receiver for the trust company.

7.36. Service of notice of charges--Contents of notice--Temporary cease and desist order.

If the Commission determines that any trust company is engaging or has engaged, or there is reasonable cause to believe that the trust company is about to engage, in an unsafe or unsound practice in conducting the business of the trust company, or if the Commission determines that any trust company is violating or has violated, or there is reasonable cause to believe that the trust company is about to violate a law, rule, or order, the Commission may issue and serve upon the trust company a notice of charges. The notice shall contain a statement of the facts constituting any alleged unsafe or unsound practice or any alleged violation and shall state the time and place at which a hearing will be held by the Commission to determine whether an order to cease and desist should be issued against the trust company. The hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of the notice.

Unless the trust company appears at the hearing, the trust company is considered to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at the hearing, the Commission finds that any unsafe or unsound practice or violation specified in the notice of charges has been established, the Commission may issue and serve upon the trust company an order to cease and desist from any such practice or violation. The order may, by provisions which may be mandatory or otherwise, require the trust company and its board members, officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation. A cease-and-desist order becomes effective at the time specified in the

order, and remains effective and enforceable as provided in the order, except to such extent as it is stayed, modified, terminated, or set aside by action of the Commission.

If the Commission determines that any unsafe or unsound practice or violation specified in the notice of charges served upon the trust company, or the continuation of the practice or violation, is likely to cause insolvency or substantial dissipation of assets or earnings of the trust company, or is likely to otherwise seriously prejudice the interests of its customers, the Commission may issue a temporary order requiring the trust company to cease and desist from the practice or violation. The order is effective upon service upon the trust company and shall remain effective and enforceable pending the completion of the proceedings pursuant to the notice and until the Commission dismisses the charges specified in the notice, or if a cease-and-desist order is issued against the trust company, until the effective date of the order.

7.37. Revocation of franchise for failure to comply with lawful requirements.

Any trust company which refuses or neglects to comply with any requirement lawfully made upon it by the Commission for a period of ninety days after demand in writing is made forfeits its franchise, and the Commission shall thereupon revoke its authority to transact business. The Commission shall give notice of the revocation to the president or other managing officer of the trust company, and shall begin action for the appointment of a receiver for the trust company and to dissolve the trust company.

7.38. Hearing on revocation of trust authority.

A trust company subject to revocation of trust authority shall be afforded the right to a hearing in accordance with Banking Commission hearing procedures under this Title.

7.39. Confidentiality of information generated by examination--Disclosure--Hearing.

All information the Commission generates in making an investigation or examination of a trust company is confidential. All confidential information shall remain the property of the Commission and shall be furnished to the trust company for its confidential use. Under no circumstances may a trust company disclose a report or any supporting documentation to anyone, other than directors and officers of the trust company or anyone acting in a fiduciary capacity for the trust company, without written permission from the Commission.

The Commission shall give ten days' prior written notice of intent to disclose confidential information to the affected trust company. Any trust company which receives a notice may object to the disclosure of the confidential information and shall be afforded the right to a hearing before the Commission. If a trust company requests a hearing, the Commission may not reveal confidential information prior to the conclusion of the hearing and a ruling. Disclosure of confidential information shall be made only to formal regulatory bodies which clearly have a need for the confidential information. In no event may the Commission disclose confidential information to the general public, any competitor, or any potential competitor of a trust company.

The submission of any information to the Commission in the course of any investigation or examination may not be construed as waiving, destroying, or otherwise affecting any privilege any person may claim with respect to the information under applicable law.

7.4. Correction of unsafe or unsound condition or operation--Appointment of special assistant--Appeal of appointment.

If the Commission determines that the business of any trust company is being conducted in an unsafe or unsound manner, it may appoint a special assistant who shall immediately take charge of the operation of the trust company for the purpose of correcting any unsafe or unsound condition or operation. After appointment, the special assistant shall continue to serve under the direction of the Commission for a period of time as the Commission determines is reasonable and necessary or until relieved by order of the Commission or of a court of competent jurisdiction. The special assistant's salary, which shall be determined by the Commission, and expenses shall be borne by the trust company under supervision. After an appointment of a special assistant, a trust company may, within thirty days from the date of the notice of the appointment, appeal in writing to the Commission. If a trust company appeals, the Commission shall fix a date for a hearing which shall be within thirty days from the date of the appeal, and following the hearing the Commission shall render an order as to the continuation or cessation of the appointment.

7.41. Insolvency defined.

A trust company is insolvent if:

(1) The actual cash market value of its assets is insufficient to pay its creditor liabilities, except that for this purpose unconditional evidence of indebtedness of the United States of America may be valued, at the discretion of the Commission, at par, cost or fair market value, whichever is the lesser; or

(2) It is unable to meet the demands of its creditors in the usual and customary manner.

7.42. Commission to take charge of insolvent trust company--Appointment of special assistant.

If it appears upon the examination of any trust company or from any report made to the Commission that any trust company is insolvent, the Commission shall take charge of the trust company and all of its property and assets. In so doing the Commission may appoint a special assistant to take charge temporarily of the affairs of the insolvent trust company until a receiver is appointed. The assistant shall qualify, give bond, and receive compensation the same as the regular examiner, but the compensation shall be paid by the insolvent trust company, or in case of the appointment of a receiver, allowed by the court as costs in the case.

7.43. Plan for reorganization of insolvent trust company.

The owners of any insolvent trust company and its creditors may formulate a plan for the reorganization of the trust company while the trust company is in the charge of the Commission or a special assistant or a receiver at any time before a dividend has been paid. The creditors of the insolvent trust company may formulate a plan for the reorganization of the trust company. If the plan is subscribed to in writing by creditors having not less than eighty percent of the known claims against the trust company, a copy of the plan is filed with the Commission, and the Commission approves the plan, the plan is legal, valid, and binding upon all creditors of the insolvent trust company to the same extent and with the same effect as if all of the creditors had joined in the execution of the plan.

7.44. Appointment of receiver--Bond--Qualifications--Report--Removal.

When the Commission takes charge of any trust company, the Commission shall ascertain its actual condition as soon as possible by making a thorough investigation into its affairs and condition. If the Commission is satisfied that the trust company cannot resume business or liquidate its indebtedness to the satisfaction of its creditors, the Commission shall appoint a receiver and require the receiver to give such bond as the Commission considers proper. The Commission also shall fix reasonable compensation for the receiver.

Receivers appointed by the Commission shall have appropriate experience with financial institutions as determined by the Commission. However, upon written application made within thirty days after the findings of insolvency, the Commission shall appoint as receiver any person whom the holders of more than fifty percent of the claims against the trust company agree upon in writing. The creditors may also agree upon the compensation and charges to be paid the receiver. Any receiver so appointed shall make a complete report to the Commission covering the receiver's acts and proceedings as a receiver. The Commission may remove for cause any receiver and appoint the receiver's successor.

7.45. Powers and duties of receiver--Order of payment of liabilities.

The receiver, under the direction of the Commission, shall take charge of any insolvent trust company and all of its assets and property and liquidate the affairs and business for the benefit of clients, creditors, and owners. The receiver may sell or compound all bad and doubtful debts and sell all the property of the trust company upon such terms as the court having jurisdiction approves. The receiver shall pay over all moneys received to the creditors of the trust company as ordered by the Commission. In distributing assets of an insolvent trust company in payment of its liabilities, the order of payment, if its assets are insufficient to pay in full all of its liabilities, shall be by category as follows:

(1) The costs and expenses of the receivership and real and personal property taxes assessed against the trust company pursuant to applicable law;

(2) Claims which are secured or given priority by applicable law;

(3) Claims of unsecured creditors;

(4) All other claims exclusive of claims on capital notes and debentures; and

(5) Claims on capital notes and debentures.

If the assets are insufficient for the payment in full of all claims within a category, the claims shall be paid in the order provided by other applicable law or, in the absence of such applicable law, pro rata.

7.45.1. Liability of receiver.

No receiver is liable to any person for good faith compliance with any law, statute, rule, or judgment, decree, or order of a court. Nor is any receiver liable to any person for any action taken or omitted unless a court finds that the receiver acted or failed to act as a result of misfeasance, bad faith, gross negligence, or reckless disregard of duty.

7.46. Periodic examination of trust company in the hands of a receiver.

At least once each six months the Commission shall examine each trust company in the hands of a receiver, and each receiver shall submit the records and affairs of the trust company to an examination by the Commission.

7.46.1. Suspension, liquidation, order against unsound practice, removal of director or officer, or injunction.

The Commission shall have the authority to order a suspension, liquidation, order against unsound practice, removal of director or officer, or injunction against a trust company the Commission finds in violation of the requirements of this Title or the laws of the Nation.

7.46.2. Disclosure of confidential information in certain actions.

The restrictions in this chapter against disclosure of confidential information do not apply to the disclosure of information by the Commission in connection with the institution and prosecution of an action against an individual or against a trust company, but disclosure of confidential information may be made only to formal governmental regulatory bodies which have a need for the confidential information.

7.47. Acquisition of trust company--Notice--Approval--Order of disapproval--Hearing.

A person acquiring control through direct or indirect ownership by an owner or an affiliated group of owners shall give the Commission at least sixty days prior written notice of any proposed trust company acquisition. If the Commission does not issue an order disapproving the proposed acquisition within that time or extend the period during which a disapproval may be issued, the proposed acquisition is approved. The period for disapproval shall be thirty days after notice is received by the Commission and may be further extended only if the Commission determines that any acquiring person has not furnished all the information required or if in the Commission's judgment, any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the Commission issues written notice of its intent not to disapprove the action.

If the Commission disapproves an acquisition, it shall serve the acquiring person with an order of disapproval. The order shall provide a statement of the basis for the disapproval. Within thirty days after service of an order of disapproval, the acquiring person may request a hearing on the proposed acquisition with the Commission.

Actual expenses incurred by the Commission in carrying out any investigation that may be necessary or required by statute shall be paid by the person submitting the proposed acquisition.

7.48. Contents of notice of proposed acquisition.

A notice of a proposed trust company acquisition shall contain, in the form prescribed by the Commission, the following information:

(1) The identity, personal history, business background, and experience of any person by whom or on whose behalf the acquisition is to be made, including the person's material business activities and affiliations during the past five years and a description of any material pending legal or administrative proceedings in which the person is a party and any criminal indictment or conviction of the person by any court;

(2) A statement of the assets and liabilities of any person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded and an interim statement of the assets and liabilities for any person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the notice;

(3) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) The identity, source, and amount of the funds or other considerations used or to be used in making the acquisition and, if any part of these funds or other considerations

has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties to the transaction, and any arrangements, agreements, or understandings with such persons;

(5) Any plans or proposals which any acquiring person making the acquisition may have to liquidate the trust company, to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(6) The identification of any person employed, retained, or to be compensated by the acquiring person or by any person on the acquiring person's behalf to make solicitations or recommendations to owners for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(7) Copies of all invitations or tenders or advertisements making a tender offer to owners for purchase of their stock or ownership units to be used in connection with the proposed acquisition; and

(8) Any additional relevant information in such forms as the Commission may require by specific request in connection with any particular notice.

7.49. Reason for disapproval of acquisition.

The Commission may disapprove any proposed acquisition if:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the trust business in any part of the Nation’s jurisdiction;

(2) The financial condition of any acquiring person is such as might jeopardize the financial stability of the trust company or prejudice the interests of the clients of the trust company;

(3) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the clients of the trust company or in the interest of the public to permit such person to control the trust company; or

(4) Any acquiring person neglects, fails, or refuses to furnish all the information required by the Commission.

7.5. Procedure for merger, consolidation, conversion, or transfer of assets and liabilities to another bank or trust company.

Before any trust company can merge, consolidate with, convert from a corporation to a limited liability company or from a limited liability company to a corporation, or transfer its assets and liabilities to another trust company or bank, it shall file with the Commission, certified copies of all proceedings of its governing board and owners relating to the merger, consolidation, conversion, or transfer. The owners' proceedings shall show that a majority of the owners voted in favor of the merger, consolidation, conversion, or transfer. The owners' proceedings shall contain a complete copy of the agreement made and entered into, with reference to the merger, consolidation, conversion, or transfer. Upon the filing of the owners' and governing board's proceedings, the Commission shall make an investigation to determine whether:

(1) The interests of the clients, creditors, and owners of each are protected;

(2) The merger, consolidation, conversion, or transfer is in the public interest; and

(3) The merger, consolidation, conversion, or transfer is made for legitimate purposes.

The Commission's consent to or rejection of a merger, consolidation, conversion, or transfer shall be based upon the investigation. No merger, consolidation, conversion, or transfer may be made without the consent of the Commission. The expense of the investigation shall be paid by the persons filing the request.

7.5.1. Proceedings to legally dissolve charter of acquired, merged, or consolidated trust company.

If a trust company has been acquired, merged, or consolidated with another trust company or financial institution, or its assets have been purchased and its liabilities assumed by another trust company or financial institution, in any instance other than an emergency, within thirty days thereafter, the directors of the trust company shall institute proceedings to legally dissolve its charter in the same manner as provided for voluntary liquidation under this Title.

7.51. Necessity of execution or delivery of deed for merger or consolidation.

When a merger or consolidation of any trust company occurs, the successor consolidated trust company or bank becomes the owner of, and entitled to, the possession of all rights, franchises, and interests, real estate, and personal property as is covered by the merger or consolidation agreement without the necessity of the execution or delivery of a deed or other form of transfer.

7.52. Fiduciary capacity of successor trust company.

Upon the merger or consolidation of any trust company, the successor trust company, upon acquiring trust authority, may be appointed to act as trustee, personal representative, conservator, or any other fiduciary capacity to the same extent and with the same authority as the trust company to which it succeeds.

7.53. Name of trust company--Name change.

No trust company may take the name of any other trust company incorporated in the Nation's jurisdiction or a name so similar to another as to be easily confused with it. No trust company may change its name until the name change has been submitted to and approved by the Commission. The Commission may refuse authority to any trust company violating this provision.

7.54. Approval required for changing place of business--Examination and investigation.

No trust company may change its principal place of business without the prior approval of the Commission, and any trust company desiring to change its place of business shall file a written application in the form and containing the information as the Commission requires. The Commission shall investigate the application and approve or disapprove it, and the expenses of the investigation shall be paid by the trust company.

7.55. Establishment of trust service offices--Application.

After first applying for and obtaining the approval of the Commission, one or more trust service offices may be established and operated by a trust company. A trust company may establish a trust service office in another jurisdiction and may conduct any activities at that office that are permissible for a trust company under the laws of that jurisdiction, so long as said activities are not in violation of the provisions and requirements of this Title.

7.56. Membership in Federal Reserve bank.

Any trust company may become a stockholder in and a member of the Federal Reserve bank of the Federal Reserve district where the trust company is located.

7.57. Depositing securities into Federal Reserve bank.

Any trust company when acting as fiduciary, and any trust company when holding securities as custodian for a fiduciary, may deposit, or arrange for the deposit, with the Federal Reserve bank in its district, of any securities the principal and interest of which the United States or any department, agency, or instrumentality of the United States has agreed to pay, or has guaranteed payment, to be credited to one or more accounts on the books of the Federal Reserve bank in the name of the trust company. Any account used for this purpose shall be designated as a fiduciary or safekeeping account, and other similar securities may be credited to the account. A trust company depositing securities with a Federal Reserve bank is subject to any rules with respect to the making and maintenance of the deposits as the Commission may promulgate. The records of the trust company shall always show the ownership of the securities held in the account.

7.58. Registering investments in name of nominee--Liability of trust company.

Any trust company, when acting as a fiduciary or a co-fiduciary with others, may with the consent of its co-fiduciary or co-fiduciaries, if any, cause any investment held in any such capacity to be registered and held in the name of a nominee or nominees of the trust company. The trust company is liable for the acts of any nominee with respect to any investment so registered.

7.59. Common trust funds and collective investment funds.

Any trust company qualified to act as a fiduciary may establish common trust funds or collective investment funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as co-fiduciaries. Any trust company qualified to act as fiduciary may, as such fiduciary or co-fiduciary, invest funds that it lawfully holds for investment in the common trust funds or collective investment funds, if the investment is not prohibited by the instrument, judgment, decree, or order creating the fiduciary relationship.

7.6. Trust company receivership and liquidation captive insurance company fund.

The Commission may establish or enter into an agreement with a captive insurance company for the management of funds to pay for trust company receivership and liquidation costs for trust companies chartered and regulated by the Commission, as well as administrative and reinsurance costs for the fund. Interest earned on money in the fund shall be deposited into the fund. Unexpended money and any interest that may be credited to the fund shall remain in the fund. Any money deposited into and distributed from the fund shall be set forth in an informational budget by the Commission.

CHAPTER 8

BRANCH BANKS AND DRIVE-IN FACILITIES

Section Titles

8.6 Indication of parent bank on branches and drive-in facilities.

8.7 Interstate branches--Approval required.

8.8 Application to establish interstate branch--Fee.

8.9 Examination of external bank's branch.

8.10 Reports required from external bank.

8.11 Joint examinations of joint enforcement actions by commission and bank supervisory agencies.

8.12 Authority of Commission in case of violation by branch of external bank.

8.13 Promulgation of rules to establish fees.

8.14 Prohibitions concerning bank names.

8.15 Intentional misleading as to source of product, service, or communication prohibited.

8.1. Operation of branches.

A branch bank or mobile branch bank may be operated by a bank only as authorized by this Title and under such rules as the Commission shall require.

8.2. Examination of branches.

Every branch bank or mobile branch bank is subject to examination by the Commission and shall pay the fees prescribed for such examinations.

8.3. Capital requirements for bank operating branch.

Any bank operating a branch bank or banks shall have total capital of not less than the minimum amount required by the Commission.

8.4. Establishment of branch banks.

A branch bank may be established de novo or by consolidating or merging with or purchasing the assets of another bank, savings and loan association, or another established financial institution.

8.5. Closing branch--Approval required--Violation as misdemeanor.

No branch bank may close without the approval of the Commission. If a branch is closed the branch certificate shall be surrendered to the Commission. Violation of this section is a misdemeanor.

8.6. Indication of parent bank on branches and drive-in facilities.

A branch bank, mobile branch bank, or drive-in facility shall clearly indicate the identity of its parent bank.

8.7. Interstate branches--Approval required.

With prior approval of the Commission, any bank first established within the jurisdiction of the Nation may establish and maintain a branch or acquire a branch in any state or other location, and may conduct any activities at a branch outside of the Nation that are permissible for a bank where the branch is located.

8.8. Application to establish interstate branch--Fee.

No bank first established within the jurisdiction of the Nation may establish or maintain a branch in another jurisdiction until the application and appropriate fee has been submitted and approved by the Commission. In acting on an application, the Commission may consider the views of the appropriate bank supervisory agencies.

8.9. Examination of external bank's branch.

The Commission may make such examinations of any branch established and maintained in the Nation's jurisdiction by an external bank as the Commission may deem necessary to determine whether the branch is operated in compliance with this Title and in accordance with safe and sound banking practices.

8.1. Reports required from external bank.

The Commission may require periodic reports regarding any external bank that has established and maintained a branch in the Nation's jurisdiction. The required reports may be provided by the bank or by the bank supervisory agency having primary responsibility for the bank. Any reporting requirements prescribed by the Commission under this section shall be consistent with the reporting requirements generally applicable to banks under this Title.

8.11. Joint examinations of joint enforcement actions by commission and bank supervisory agencies.

The Commission may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch bank. The Commission may at any time take any actions independently if it deems such actions to be necessary or appropriate to carry out the Commission's responsibilities or to ensure compliance with applicable law. However, in the case of an external bank, the Commission shall recognize the exclusive authority of the bank's home regulator with respect to matters of safety and soundness.

8.12. Authority of Commission in case of violation by branch of external bank.

If it is determined that a branch maintained by an external bank within the Nation's jurisdiction is being operated in violation of any provision of the laws of the Nation or is being operated in an unsafe and unsound manner, the Commission has the authority to take any appropriate enforcement action. The Commission shall give notice of the enforcement action to the bank's home regulator.

8.13. Promulgation of rules to establish fees.

The Commission may promulgate rules to establish fees and to provide the necessary forms to administer the activities set forth in this Title.

8.14. Prohibitions concerning bank names.

No provision of this chapter permits any person, partnership, association, or corporation to identify a newly formed bank, to rename an existing bank, or to open a branch of a newly formed or existing bank, if the effect of such formation, opening, or renaming would be likely to create confusion between the trade name, trademark, service mark, or trade identity of such bank or branch and an existing bank or branch having prior trade name, trademark, service mark, or trade identity rights in the trade area sought to be entered by such newly formed or renamed bank or branch.

8.15. Intentional misleading as to source of product, service, or communication prohibited.

No person may use the word "bank" or any variation of the word, or logo of an existing bank, trust company, savings association, savings bank, or affiliate in a manner that intentionally misleads a person about the source of origin, affiliation, or sponsorship of a product or service or about the true identity source of a communication regardless of the nature of the communication.

CHAPTER 9
BANK SERVICE CORPORATIONS

Section Titles

9.1. "Bank service corporation" and "bank services" defined.

(1) "Bank service corporation," any corporation organized to perform bank services for one or more banks, each of which owns part of the capital stock of such corporation.

(2) "Bank services," activities which are a part of the business of banking or incidental thereto, including the servicing of mortgages and loans; the leasing of personal property; the operation of travel agencies; the operation of credit bureaus or collection or billing agencies; check and deposit sorting and posting; computation and posting of interest and other charges; preparation and mailing of checks, statements, notices and similar items; any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank; or such other related activities as the commission may by rule determine to be part of the business of banking, provided that the receipt of deposits and the making of loans are not bank services for the purpose of this chapter.

9.2. Investment in bank service corporation.

Any bank shall have power to purchase capital stock, bonds, debentures, or other such obligations of a bank service corporation.

9.3. Authority of bank service corporation.

No bank service corporation may engage in any activity other than the performance of bank services for banks.

9.4. Ownership of bank or bank holding company stock prohibited.

No bank service corporation may purchase, hold or acquire the capital stock of any bank chartered by the Nation, nor any state or national bank or of any bank holding company.

9.5. Examination of bank services.

Any bank services performed by a bank service corporation for any bank, whether on or off the premises of such bank, shall, as to such bank, be subject to regulation and examination to the same extent as if such bank services were performed by the bank itself on the premises of such bank.

CHAPTER 10
BANK DEPOSITS

Section Titles

10.1. "Deposit" or "deposits" defined.

The word "deposit" or "deposits" shall be construed to be the unpaid balance of money or its equivalent, including "deposits subject to check"; "dividends unpaid"; "savings deposits"; "special deposits"; "trust deposits"; "certified checks" and "cashier's checks outstanding"; "demand certificates of deposit"; "time certificates of deposit"; "collections made but not remitted"; and "due to other banks," on which the bank is primarily liable except "overdrafts on correspondents"; or other terms of like import. If any bank has borrowed money on its bills payable, pursuant to a contract which grants permission to the loaning bank to appropriate and to apply any credit balance which the books of the loaning bank show to be due or owing to the borrowing bank, to be credited on such bills payable without regard to the date of maturity thereof, the money received on such bills payable by such borrowing banks shall be deemed "deposits."

10.2. Minors' accounts.

A bank may operate its deposit account in the name of a minor or in the name of two or more persons, one or more of whom are minors, with the same effect upon its liability as if such minors were of full age.

10.3. Deposits in name of two or more persons.

Whenever a deposit has been made or shall hereafter be made, in any bank in the names of two or more persons, payable to any of them or payable to the survivor of them, such deposit or any part thereof, or any interest or dividend thereon, may be paid to any one or more of said persons whether the other be living or not, and the receipt or acquittance of the person or persons so paid shall be a valid and sufficient release and discharge to the bank for any payment so made.

10.4. Deposits in trust for another.

Whenever any deposit is made in a bank by a person which in form is in trust for another, but no other or further notice of the existence and terms of a legal and valid trust is given in writing to the bank, in the event of the death of the trustee, the deposit or any part thereof may be paid to the person for whom the deposit was made, together with the dividends or interest thereon, whether or not such person is a minor.

10.5. Tax liability on payments to survivors of deposits in name of two or more persons or in trust for another.

No bank paying any survivor or survivors under this chapter is liable for any taxes related to such payment.

10.6. Statement of account between bank and depositor--Limitation on depositor's recourse after statement rendered.

When a statement of account has been rendered by a bank to a depositor accompanied by vouchers, if any, which are the basis for debit entries in such account, or the depositor's passbook or other formal record has been written up by the bank showing the condition of the depositor's account and delivered to such depositor with like accompaniment of vouchers, if any, such account shall, after a period of six years from the date of its rendition, in the event no objection thereto has been theretofore made by the depositor, be deemed finally adjusted and settled and its correctness conclusively presumed and such depositor shall thereafter be barred from questioning the incorrectness of such account for any cause.

10.7. Duty of depositor to examine statement of account and vouchers.

Nothing in this chapter shall be construed to relieve the depositor from the duty of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the bank and of immediate notification to the bank upon discovery of any error therein, nor from the legal consequences of neglect of such duty.

10.8. Preferential deposits.

No bank may give preference to any depositor or creditor by pledging the assets of the bank as collateral security except as provided in this Title and as follows:

(1) The bank may deposit with the treasurer of the United States so much of its assets as may be necessary to qualify as a depository for federal funds and bankruptcy court funds;

(2) A bank, in order to qualify as a depository of funds deposited by the Nation, any state, any political subdivision thereof, including counties, municipalities, townships, and school districts, or by any officer, commission, board, bureau, or agency of any state or political subdivision or any tribal government, shall segregate as security, investment securities, or irrevocable standby letters of credit, or a surety bond, in a sum equal to one hundred percent of the amount deposited in excess of the amount insured by the Federal Deposit Insurance Corporation;

(3) A bank may pledge securities to guarantee deposit of funds in excess of the amount insured by the Federal Deposit Insurance Corporation;

(4) The public deposits preferred by this section are hereby granted a paramount, preferred, and perfected first lien on the bank assets so deposited or segregated or pledged.

10.9. Substitution or exchange of securities deposited to qualify as depository for funds of governmental subdivisions.

Any bank pledging such securities pursuant to this chapter may substitute or exchange, at any time it deems it advisable or desirable and without concurrence of the depositor, or any officers of such depositors, eligible securities of like nature and character for securities pledged, if:

(1) Such securities so substituted or exchanged shall at the time of such substitution or exchange, have a market value of at least equal to the market value of the securities released; and

(2) In the event of such substitution or exchange, the holder or custodian of the securities shall, on the same day, forward by registered or certified mail to the public deposit protection commission and the depository bank, a receipt specifically describing

and identifying both the securities so substituted or exchanged and those released and returned to the depository bank.

10.1. Loans prohibited when reserve deficient.

Whenever the reserve of any bank shall fall below the legal amount required, such bank shall not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand.

CHAPTER 11
SAFE DEPOSIT AND SAFEKEEPING

Section Titles

11.1. Definition of terms.

Terms used in this chapter, unless the context otherwise plainly requires, shall mean:

(1) "Lessee," a person contracting with the lessor for the use of a safe deposit box;

(2) "Lessor," a bank or branch bank which engages in the business of renting safe deposit facilities;

(3) "Safe deposit box," a box, vault, or other receptacle maintained by a lessor in its vault and the purpose of which is to secure the property of a lessee.

11.2. Regulation of safe deposit by Commission.

The leasing of safe deposit boxes by a lessor shall be subject to such rules as the Commission may prescribe, and such rules shall be promulgated with a view toward ensuring as much privacy and security to the lessee as sound banking practice will allow.

11.3. Fiduciary's access to safe deposit.

Where a safe deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

(1) By any one or more of the persons acting as personal representatives;

(2) By any one or more of the persons otherwise acting as fiduciaries when authorized in writing signed by all other persons so acting;

(3) By any agent authorized in writing, signed by all of the persons acting as fiduciaries.

11.4. Power of attorney.

Where a lessor without knowledge of the death or of an adjudication of legal incompetence of the lessee, deals with his agent pursuant to a written power of attorney signed by such lessee, the transaction binds the lessee's estate and the lessee.

11.5. Minor's lease of safe deposit.

A bank may lease a safe deposit box to and in connection therewith deal with a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

11.6. Joint leaseholds in safe deposit.

Joint leaseholds in and to a safe deposit box may be created by contract with two or more persons, including minors, named as lessees. The terms of the contract may provide that any one or more of the lessees, or the survivor or survivors of the lessee or lessees shall have access and entry to the safe deposit box and the right to remove the contents from the box whether the other lessee or lessees be living, incompetent, or dead, and in case of such removal the lessor is not liable for the removal. The existence of a joint leasehold agreement in and to a safe deposit box shall in no way affect a determination as to what persons hold Title to the contents of such box.

11.7. Death of lessee--Procedures for opening and delivery of contents of safe deposit.

If only one lessee is named in the lease agreement covering a safe deposit box rental and such lessee shall die, the safe deposit box may be opened at any time thereafter and all contents

may be delivered, without inventory, to the personal representative or special administrator of a deceased lessee, and without liability to the lessor.

In the alternative, after the lessee's death, the safe deposit box may be opened at any time, in the presence of those persons presenting the key thereto and claiming to be interested in the contents thereof, by two employees of the lessor, one of whom shall be an officer of the lessor. The employees may remove all instruments of a testamentary nature and personally deliver or forward them by registered or certified mail to the probate court having apparent jurisdiction. The employees may deliver life insurance policies contained in the box to the beneficiary named in the policies. Any and all other contents of the box so opened shall be kept and retained by the lessor and shall be delivered only to the parties legally entitled to the same.

If no person presents the key to the safe deposit box within six months after the death of the lessee, the lessor, by two employees, one of whom shall be an officer of said lessor, may open the box by forcible entry and remove the contents and deliver the same to the probate court, subject to the payment of rentals, of expenses, and the repairs.

This section applies if all of the lessees under a joint leasehold agreement are deceased.

11.8. Death of joint lessee or other having right of access--Notification of lessor.

Any person or representative having a right of access to a safe deposit box or other receptacle of similar character shall, upon the death of any other person having a right of access to such box or receptacle, notify the person, firm, partnership, association, limited liability company, joint-stock company, or corporation from whom the box or receptacle is leased or rented of the death of such person prior to accessing the box or receptacle.

11.9. Corporate lessee.

If the lessee is a corporation and the president, treasurer, or secretary certifies that certain designated persons are authorized to enter the box, the lessor may permit such designated person to enter without liability therefor.

11.1. Unpaid rental--Procedures for opening safe deposit and disposition of contents.

If the rental due on a safe deposit box has not been paid for one year, the lessor may send a notice by registered or certified mail to the last known address of the lessee stating that the safe deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within thirty days. After such time the box may be opened in the presence of an officer of the lessor and a notary public. The notary public shall issue a certificate reciting the name of the lessee, the date of the opening of the box, the names of the witnesses present, and a list of its contents. The certificate with the contents of the box shall be included in a sealed package marked with the lessee's name and date of opening, and it shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the

box until it is claimed or delivered to the treasurer of the Nation for disposal. The treasurer shall reimburse the lessor for unpaid box rentals from the proceeds of the sale, if any, and remaining proceeds shall become property of the Nation.

CHAPTER 12

BANK LOANS

Section Titles

12.16 Right of offset on loans.

12.17 Compounding interest and service fees.

12.18 Security interests authorized.

12.19 Maintenance of deposit as condition for loan.

12.1. Application to bank loans.

This chapter applies to bank loans, including similar credit vehicles as determined by the Commission.

12.2. Loan or credit limitation.

Except as otherwise provided in this Title, no bank organized as a corporation or limited liability company may loan, or otherwise extend credit, to any corporation, partnership, or individual, an amount greater than the sum of:

(1) Twenty percent of its capital stock or members' equity and surplus; and

(2) Ten percent of its undivided profit.

Such limit shall be determined for each calendar quarter on the basis of the bank's quarterly report of condition for the immediately previous calendar quarter.

12.3. Application for exception to loan or credit limitation.

A chartered bank in satisfactory condition, with the consent of its governing board, may request an exception to the loan or credit limitation from the Commission. The Commission may approve the exception if the loan is not on the loan watch list or problem loan report of the bank, or classified at the most recent regulatory examination, and the loan shall be:

(1) Fully secured by the fair market value of the collateral and may not exceed one hundred percent of the discounted value assigned by the bank to the collateral;

(2) A loan in the bank's normal trade area; and

(3) Originated by the requesting bank.

No loan approved under this section may exceed an amount greater than the sum of twenty-five percent of the bank's capital stock or members' equity, surplus, and undivided profits. Such limit shall be determined on the basis of the bank's quarterly report of condition for the immediately

previous calendar quarter and remain in effect until the loan expires. The aggregate balance of all loans or extensions of credit made by a bank pursuant to this section may not exceed one hundred percent of the bank's tier one leverage capital.

12.4. Expiration of exception--New exception request.

Any limit exception granted by the Commission expires when the loan matures. A new exception request shall be submitted prior to the renewal of the loan if the loan to be renewed would exceed the loan or credit limitation as provided in this chapter, unless otherwise approved by the Commission.

12.5. Loan defined.

For the purpose of calculating loan or credit limitations, a loan includes any credit exposure to a borrower arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between a bank and that borrower.

12.6. Derivative transaction defined.

A derivative transaction is any transaction that is a contract, agreement, swap, warrant, note, or option that is based in whole, or in part, on the value of any interest in, or any quantitative measure or the occurrence of any event relating to interest rates.

12.7. Loan to customer used for partnership or corporation.

A loan or other extension of credit to a customer, the proceeds of which the customer intends to place in a partnership or a corporation in which the customer is a stockholder, is not required to be combined with obligations of the partnership or corporation unless the loan is made in reliance on the assets and repayment ability of the partnership or the corporation.

12.8. Discounting not considered as money borrowed for purposes of loan limitation.

The discount of bills of exchange drawn in good faith against actual existing values, and the discount of commercial paper actually owned by the person negotiating the same shall not be considered as money borrowed.

12.9. Maximum amount of loans by bank to its executive officers, directors, and certain shareholders.

The maximum amount of loans by a bank to its executive officers, its directors, and its shareholders who individually own more than ten percent of the capital stock of the bank or its parent bank holding company, shall be set by rules promulgated by the Commission. Loans to any partnership or corporation in which such officers, directors, and shareholders own an

aggregate interest of twenty percent or more shall be included as a loan to the officers, directors, and shareholders.

12.1. Liability of officers and directors for excessive loans.

The issuing officer, the chief executive or managing officer and the board of directors of a bank shall be held personally liable for all excessive loans, until they are in compliance, including overdrafts which could create excess. Such liability shall remain in effect for so long as any such loans may be in excess of the amount limited by law.

12.11. Non-risk and government guaranteed loans not included in loan limits.

For the purpose of determining whether a loan is within the loan limits established by this chapter, that portion of a loan described in subdivisions (1), (2) and (3) of this section may not be considered as part of the loan:

(1) That portion of a loan which is secured by a certificate of deposit, time savings certificate or prior evidence of obligation from the bank to the borrower, which obligation is not payable on demand by the borrower;

(2) That portion of a loan secured by bonds, notes, certificates of indebtedness or treasury bills of the United States or by other such obligations, which are backed by the full faith and credit of any department, agency, bureau, board, commission or establishment of the United States or any corporation owned directly or indirectly by the United States;

(3) That portion of a loan secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation owned directly or indirectly by the United States.

12.12. Sale of surplus Federal Reserve funds and excess bank funds not loan.

The sale of surplus Federal Reserve funds and excess bank funds is not considered loans or obligations and are not subject to any limitation based on capital stock and surplus.

12.13. Mortgage on real estate.

A bank may lend on the security of a first or subsequent mortgage on real estate.

12.14. Revolving credit authorized.

A bank may extend credit and collect a credit service charge through a revolving loan account arrangement with a debtor which permits the debtor to obtain loans from time to time by cash advances, by the purchase or satisfaction by the bank of obligations of the debtor incurred

pursuant to a credit transaction, or otherwise under a credit card, check-credit, overdraft checking or other similar credit plan.

12.15. Collection of certain credit service charges by bank.

Notwithstanding any other provisions of law, a bank may contract for and collect the following credit service charges in connection with the extensions of credit, in an amount agreed to by the bank and the debtor either initially or pursuant to an authorized change in terms:

(1) Membership fees, whether assessed on an annual or other periodic basis;

(2) Transaction fees;

(3) Interest charges permitted by law;

(4) Charges for exceeding a designated credit limit;

(5) Charges for stopping payment;

(6) Charges for each return of a dishonored check, negotiable order of withdrawal or draft; and

(7) Other charges made in connection with the revolving loan or charge account arrangement.

All of the fees and charges permitted by this section shall be deemed interest. No fee, expense or other charge whatsoever may be taken or received by a bank under a revolving loan or charge account arrangement except as provided in this section.

12.16. Right of offset on loans.

In addition to the general liens created by agreements with its customers, a bank may offset against all loan balances, whether principal or interest, owed to the bank by a customer, all or any portion of the bank's obligation to the customer in the form of certificates of deposit, time savings certificates, and any other form of deposit.

12.17. Compounding interest and service fees.

A bank may compound the interest or service fees charged on loans when disclosed in writing to the borrower.

12.18. Security interests authorized.

A credit agreement, or any agreement executed in connection therewith, may provide for the creation of a security interest in any personal or real property, including any goods under such agreement, to secure payment of a debtor's outstanding indebtedness under such agreement.

12.19. Maintenance of deposit as condition for loan.

A bank may require a borrower to maintain funds on deposit as a condition precedent to the granting of credit or any loan.

CHAPTER 13
BANK RECORDS, ACCOUNTS AND REPORTS

Section Titles

13.1. Books and accounts required by Commission--Civil penalty.

Every bank shall keep such books and accounts as the Commission may require for the purpose of showing the true condition of the bank, and shall keep accurate, convenient, and complete records of such transactions and accounts in permanent form. Any bank which fails or refuses to open and keep such books or accounts shall be subject to a civil penalty of five hundred dollars for each day it violates this section, and the Commission shall have authority to institute legal proceedings for the recovery of such penalty.

13.2. Reports to Commission.

Every bank shall make a report to the Commission at least once during each calendar year at such times as the Commission shall require, in the form which the Commission shall prescribe. The Commission may require additional special reports as frequently as it deems necessary, and may accept copies of federal reports to comply with this section.

13.3. Failure to report--Civil penalty.

Any bank failing to make and transmit any report as required by this Title is subject to a civil penalty of five hundred dollars for each day during which such failure continues; and if any bank

fails or refuses to pay such penalty, the Commission shall institute proceedings for the recovery thereof.

13.4. Fiduciary examinations.

Only summary examinations and reports shall be required with respect to fiduciary activities which are subject to court accountings.

13.5. Preservation of records.

Every bank shall retain and preserve its bank records and supporting documents for a period of time set forth in rules issued by the Commission.

CHAPTER 14
REORGANIZATION OF BANKS

Section Titles

14.1. Merger or consolidation of banks.

A bank authorized under this Title may merge or consolidate with a state bank, national bank, or savings and loan association upon notice to and approval by the Commission.

14.2. Purchase of assets and assumption of liabilities.

A bank may purchase the assets and assume the liabilities of another bank or savings and loan association upon notice to and approval by the Commission.

14.3. Conversion to national bank.

Any bank may make application for reorganization as a national bank under the laws of the United States. The bank shall forward to the Commission a copy of a resolution of the board of directors to convert to a national bank. In the event such bank secures a certificate from the United States Comptroller of the Currency authorizing it to transact business as a national bank, such national bank shall take and hold all the assets, real and personal, of the prior bank, subject to all liabilities existing against such bank at the time of such reorganization, and shall immediately notify the Commission of such reorganization and transfer. At the time of reorganization, the directors of such bank shall institute proceedings to dissolve legally the prior bank charter in the same manner as provided herein for dissolution under voluntary liquidation.

14.4. Conversion from state bank, national bank, federal savings association, or federal savings bank.

Any state bank, national bank, federal savings association, or federal savings bank that desires to take the necessary steps to effect dissolution as a national bank, a federal savings association or a federal savings bank with the federal regulatory authority having jurisdiction may make application to the Commission to reorganize as a bank chartered under this Title. An application for conversion shall consist of a letter of intent signed by a majority of the institution's board of directors together with any additional information required by the Commission. The stockholders of the converting bank shall make, execute, and acknowledge articles of incorporation as required by this Title. Upon receipt of an application for approval of a conversion, the Commission shall conduct such investigation as it may deem necessary to ascertain whether:

(1) The letter of intent and supporting items satisfy the requirements of this Title;

(2) The plan of conversion adequately protects the interests of depositors;

(3) The requirements for a conversion under all applicable laws have been satisfied, and the resulting bank would satisfy the requirements for banks authorized by this Title; and

(4) The resulting bank will possess an adequate capital structure.

Upon filing and approval of such articles as provided by this Title, and upon the issuance of a certificate of authority by the Commission as provided herein, the institution may transact business as a bank pursuant to this Title, and thereupon all assets, real and personal, of the dissolved bank shall be vested in and become the property of the converted bank.

14.5. Liquidation procedures in the event of reorganization.

If a bank has been merged or consolidated with another bank or the bank's assets have been purchased and the bank's liabilities assumed by another bank, in any instance other than an emergency, within thirty days thereafter, the directors of the bank shall institute proceedings to legally dissolve the bank's charter in the same manner as provided for voluntary liquidation under this Title. Approval by the Commission of the merger, consolidation, or purchase of assets and assumption of liabilities constitutes approval of the voluntary liquidation. However, the approval is subject to approval of the proposal to liquidate and dissolve by a vote of two-thirds of the outstanding stock of the liquidating bank at a meeting called for the purpose of considering such action.

14.6. Emergency takeover.

If the Commission deems it necessary that any bank be merged, consolidated, or its assets purchased and its liabilities assumed in order to protect the depositors and the public from unsound practices, and another bank is willing to merge, consolidate, or purchase the assets and assume the liabilities of such financial institution, the Commission may declare that such merger, consolidation, or purchase of assets and assumption of liabilities shall constitute an emergency takeover. The Commission may waive any requirement, whether by law or by rule, relative to required application materials, investigation, and length of time before the Commission may act. Nothing in this section limits in any way the rights of shareholders of either financial institution to approve the transaction and the manner as may be provided for by applicable law.

CHAPTER 15
SUSPENSION AND LIQUIDATION OF BANKS

Section Titles

15.32 Fiduciary positions of bank terminated after commencement of liquidation.

15.33 Subrogation rights of Federal Deposit Insurance Corporation in liquidation of bank.

15.34 Notice of liquidation.

15.35 Disposition of safe deposit boxes in liquidation.

15.36 Settlement of claims in liquidation proceedings.

15.37 Objections to schedule of determinations in settlement of claims.

15.38 Partial distributions to claim holders authorized--Final distribution.

15.39 Priority of claims in liquidation proceedings.

15.40 Payment of claims not filed within time prescribed.

15.41 Pro rata payment of claims authorized.

15.42 Distribution of assets remaining after liquidation.

15.43 Disposition of unclaimed funds after liquidation.

15.44 Accounting after liquidation--Cancellation of charter--Order and certificate of dissolution.

15.45 Instruments affecting real estate executed on behalf of insolvent banks validated.

15.1. Voluntary liquidation--Requirements for approval.

Any bank may file an application with the Commission to voluntarily liquidate and dissolve. Such application may be approved by the Commission upon finding:

(1) The proposal to liquidate and dissolve has been approved by a vote of two-thirds of the outstanding voting stock at a meeting called for the purpose of considering such action.

(2) The bank is solvent and has sufficient liquid assets to forthwith pay off depositors and creditors.

15.2. Ceasing to do business and winding up affairs on voluntary liquidation.

Upon approval by the Commission, a bank shall forthwith cease to do business, shall have only the powers necessary to effect an orderly liquidation and shall proceed to pay its depositors and creditors and to wind up its affairs.

15.3. Notice of voluntary liquidation--Manner of publication--Contents.

Within thirty days of the approval, a notice of voluntary liquidation shall be:

(1) Mailed to the last known post-office address of each depositor, creditor, person interested in funds held as a fiduciary, lessee of a safe deposit box or bailor of property;

(2) Posted conspicuously on the premises of the bank; and

(3) Published as the Commission shall require.

The bank shall mail with the notice a statement of the amount shown on its books to be the claim of the depositor or creditor. The notice shall also demand that property held by the bank as bailee or in a safe deposit box be withdrawn by the person entitled thereto within thirty days. The notice shall direct that objections of depositors and creditors, if the amount claimed differs from that in such statement be filed with the bank before a specified date which shall not be less than sixty days from the date of first publication in accordance with the procedure described therein. The notice shall also include such other information as the Commission or the bank may deem pertinent.

15.4. Resignation of fiduciary positions and settlement of accounts on voluntary liquidation.

As soon after approval as may be practicable the bank shall resign all fiduciary positions and take such action as may be necessary to settle its fiduciary accounts.

15.5. Disposition of safe deposit on voluntary liquidation.

The contents of safe deposit boxes which have not been removed within thirty days after demand shall be opened and the contents dealt with in the manner provided for boxes upon which the payment of rental is in default and the sealed packages containing the contents and the certificates together with any other unclaimed property held by the bank as bailee and certified inventories thereof shall be transferred to the Commission who shall retain it for one year unless sooner claimed by the person entitled thereto. After one year the property shall be transferred to The Public Bank of The Catawba Nation for disposition in accordance with applicable law.

15.6. Depositor's or creditor's rights not impaired by voluntary liquidation--Return of safe deposit rental.

The approval of an application for voluntary liquidation shall not impair any right of a depositor or creditor to payment in full and all lawful claims of creditors and depositors shall promptly be paid. The unearned portion of the rental of a safe deposit box shall be returned to the lessee.

15.7. Distribution of assets after discharge of obligations on voluntary liquidation--Disposition of unclaimed distributions.

Any assets remaining after the discharge of all obligations shall be distributed to the stockholders in accordance with their respective interests. No such distribution shall be made before:

(1) All claims of depositors and creditors have been paid, or, in the case of any disputed claim, the bank has transmitted to the Commission a sum adequate to meet any liability that may be judicially determined;

(2) Any funds payable to a depositor or creditor and unclaimed have been transmitted to the Commission; and

(3) Approved by the Commission.

Any unclaimed distribution to a stockholder or depositor shall be held until ninety days after the final distribution and then transmitted to The Public Bank of The Catawba Nation for disposition.

15.8. Authority of Commission to take possession of bank in voluntary liquidation.

Where a bank has commenced voluntary liquidation and the Commission finds that the assets will be insufficient for the full discharge of all obligations or that completion of the liquidation has been unduly delayed, the Commission may take possession and complete the liquidation in the manner provided in this chapter for involuntary liquidations.

15.9. Reports of progress in voluntary liquidation--Order and certificate of dissolution.

The Commission may require reports of the progress of a bank engaged in voluntary liquidation and whenever the Commission is satisfied that the liquidation has been properly completed it shall cancel the charter and enter an order of dissolution.

15.1. Cancellation of voluntary liquidation.

A bank may, at any time prior to the Commission's cancellation of its charter, revoke its intention to voluntarily liquidate, if it receives approval of its action upon an affirmative vote of at least two-thirds of the voting shares of the bank. Written evidence of its intentions delivered to the Commission prior to cancellation are considered an effective revocation.

15.11. Authority to suspend activities and take possession of bank--Grounds.

After a hearing with three days' oral or written notice to a majority of the members of the board of directors, the Commission may suspend all activities and take possession of the business and property of a bank if it finds:

(1) The bank's capital is impaired or the bank is otherwise in an unsound condition;

(2) The bank's business is being conducted in an unlawful or unsound manner;

(3) The bank is unable to continue normal operations;

(4) The bank refuses to permit, obstructs, or impedes an examination;

(5) The bank places its affairs and assets under the control of the Commission;

(6) A parent corporation refuses to permit, obstructs, or impedes an examination;

(7) The bank is insolvent; or

(8) The bank's insurance has been terminated pursuant to an action initiated by the Federal Deposit Insurance Corporation.

15.12. "Insolvent" defined.

"Insolvent" means incapable of meeting the demands of creditors or having liabilities which exceed assets.

15.13. Receipt of deposits by insolvent bank unlawful--Felony.

No bank may receive any deposit when insolvent. No officer, director or employee who knows, or in the proper performance of his duty should know, of such insolvency may receive or authorize the receipt of such deposit. Any person violating this section shall be guilty of a felony.

15.14. Notice of suspension and possession.

The Commission shall suspend the activities and take possession of a bank by posting upon the premises (if any) and upon the Commission’s public notice website a notice reciting that all activities shall be suspended and that the Commission is assuming possession pursuant to this chapter and the time, not earlier than the posting of the notice, when the Commission's possession is deemed to commence. The Commission shall notify the appropriate Federal Reserve bank of an action to take possession of any bank which is a member of the Federal Reserve system.

15.15. Management and control powers of Commission.

When the Commission has taken possession it shall be vested with the full and exclusive power of management and control, including the power to assess outstanding capital stock, continue or to discontinue the business, to stop or to limit the payment of its obligations, to employ any necessary assistants, to execute any instrument in the name of the bank, to commence, defend and conduct in its name any action or proceeding in which it may be a party, to terminate possession by restoring the bank to its board of directors, and to reorganize or liquidate the bank in accordance with this chapter.

15.16. Court jurisdiction of proceedings--Venue.

The Tribal Court designated by the Catawba Nation shall have original jurisdiction over all proceedings brought under this chapter. The venue of such proceedings shall be in the principal facility where the court designated by the Catawba Nation is located.

15.17. Change of venue.

At any time after the commencement of a proceeding under this chapter, the Commission may apply to the court for an order changing the venue to any other court in which the Commission deems that such proceeding may be most economically and efficiently conducted.

15.18. Appointment of Federal Deposit Insurance Corporation as receiver in liquidation proceedings.

The Commission may appoint the Federal Deposit Insurance Corporation as receiver for a bank of which it has taken possession. Upon filing with the court an order of appointment of the receiver and a certificate indicating the acceptance by the Federal Deposit Insurance Corporation, the possession of all the assets, business, and property, and the title thereto, shall be deemed transferred to such corporation. The Commission shall be forever thereafter relieved from all responsibility and liability in respect to the liquidation of the bank.

15.19. Powers of Federal Deposit Insurance Corporation as receiver in liquidation proceedings--Actions to recover money damages.

The Federal Deposit Insurance Corporation may liquidate, reorganize, merge, or consolidate the bank in such manner as is permitted by the laws of the United States or by this chapter, possessing all rights, powers, duties, and obligations of the Commission or other official as therein set forth including the right to operate the trust department of any such bank which is qualified to do the business of a trust company.

15.2. Postponement of limitation periods on taking actions.

When the Commission has caused the suspension and taken possession of a bank, there shall be a postponement until six months after the commencement of such possession actions of the date upon which any period of limitation fixed by a statute or agreement would otherwise expire

on a claim or right of action of the bank, or upon which an appeal must be taken or a pleading or other document must be filed by the bank in any pending action or proceeding.

15.21. Authority to take action in emergency.

If, in the discretion of the Commission, an emergency exists which will result in serious losses to the depositors and creditors, the Commission may immediately suspend all activities and take possession of a bank without advance notice.

15.22. Applications to enjoin from suspending activities and taking possession of bank.

Within three days after the Commission has suspended and taken possession of the property and business of a bank, that bank may apply to the court to enjoin further proceedings. The court, after requiring the Commission to show cause why further proceedings should not be enjoined and after a hearing and a determination upon the merit of the facts, may dismiss the application, or may enjoin the Commission from further proceedings, and may void any appointment of a receiver, and direct the Commission or the receiver to surrender the property and business to the bank. This section provides the exclusive method for challenging the actions of the Commission under this chapter.

15.23. Proceedings exempt from open meetings and administrative procedure laws.

Proceedings under this chapter are exempt from open meetings and administrative procedure laws codified outside of this Title.

15.24. Reorganization of bank--Distribution and effect of reorganization plan.

If the Commission determines to reorganize a bank it shall enter an order proposing a reorganization plan. A copy of the plan shall be sent to each depositor and creditor who will not receive payment of any claim in full under the plan together with notice that the Commission will proceed to effect the reorganization unless, within fifteen days, the plan is disapproved in writing by persons holding one-third or more of the aggregate amount of those claims.

15.25. Execution of lien on assets of bank in possession prohibited--Powers of Commission.

No judgment, lien or attachment may be executed upon any asset of the bank while it is in possession of the Commission. Upon the election of the Commission or receiver in connection with a liquidation or reorganization:

(1) Any lien or attachment, other than an attorney's or mechanic's lien, obtained upon any asset of the bank during the possession or within four months prior to commencement thereof shall be vacated except liens created by the Commission while in possession.

(2) Any transfer of an asset of the bank made after or in contemplation of its insolvency with intent to effect a preference shall be voided.

15.26. Borrowing money by Commission in possession.

The Commission may borrow money in the name of the bank in its possession and may pledge bank assets as security for the loan.

15.27. Expenses paid from assets.

All necessary and reasonable expenses of the Commission's suspension and taking possession of a bank and of its reorganization or liquidation shall be paid from the assets thereof.

15.28. Requirements for adoption of reorganization plan.

No plan of reorganization may be prescribed under this chapter unless, in the opinion of the Commission or receiver:

(1) The plan is feasible and fair to all classes of depositors, creditors and stockholders;

(2) The face amount of the interest accorded to any class of depositors, creditors or stockholders under the plan does not exceed the value of the assets upon the liquidation less the full amount of the claims of all prior classes, subject, however, to any fair adjustment for new capital that any class will pay under the plan;

(3) The plan provides for the issuance of common stock in an amount that will provide an adequate ratio to assets;

(4) Any exchange of new common stock for obligations or stock of the bank will be effected in inverse order to the priorities in liquidation of the classes that will retain an interest in the bank and upon terms that fairly adjust any change in the relative interests of the respective classes that will be produced by the exchange;

(5) The plan assures the removal of any director, officer or employee responsible for any unsound or unlawful action or the existence of any unsound condition;

(6) Any merger or consolidation provided by the plan conforms to the requirement of this Title.

15.29. Modification of reorganization plan or liquidation of bank--Grounds and notice requirements.

Whenever in the course of reorganization supervening conditions render a plan of reorganization unfair or its execution impractical, the Commission may modify the plan or liquidate the bank. Any such action shall be taken by order upon reasonable notice.

15.3. Limitations on powers in liquidating bank.

In liquidating a bank, the Commission or receiver may exercise any power thereof but may not, without the approval of the court:

(1) Sell any asset of the bank having an appraised value in excess of ten thousand dollars;

(2) Compromise or release any claim which exceeds five thousand dollars, exclusive of interest; or

(3) Make any payment on any claim, other than a claim upon an obligation incurred by the Commission or receiver, before preparing and filing a schedule of determinations in accordance with this chapter.

15.31. Executory contracts of bank terminated after commencement of liquidation.

Within six months of the commencement of involuntary liquidation, the Commission or receiver may terminate any executory contract for services or advertising to which a bank is a party or any obligation of a bank as a lessee. A lessor who receives sixty days' notice of the election to terminate such a lease shall have no claim for rent other than rent accrued to the date of termination nor for damages for such termination.

15.32. Fiduciary positions of bank terminated after commencement of liquidation.

As soon after the commencement of involuntary liquidation as is practicable, the Commission or receiver shall take the necessary steps to terminate all fiduciary positions held by a bank and take such action as may be necessary to surrender all property held by such bank as a fiduciary and to settle its fiduciary accounts.

15.33. Subrogation rights of Federal Deposit Insurance Corporation in liquidation of bank.

The right of any agency of the United States insuring deposits of a bank in liquidation to be subrogated to the rights of depositors upon payment of their claim shall not be less extensive than the law of the United States requires as a condition of the authority to issue such insurance or make such payment.

15.34. Notice of liquidation.

As soon after commencement of liquidation by the Commission or receiver as practicable, it shall issue notices consistent with the provisions of this chapter relating to voluntary liquidation by banks, except that no notice need be sent relating to fiduciary accounts as therein mentioned.

15.35. Disposition of safe deposit boxes in liquidation.

Safe deposit boxes in banks being liquidated, the contents of which have not been removed before the date specified, shall be disposed of by the Commission as in § 15.5.

15.36. Settlement of claims in liquidation proceedings.

Within six months after the last day specified in the notice for the filing of claims or such longer period as may be allowed by the court, the Commission or receiver shall:

(1) Reject any claim determined to be invalid;

(2) Determine the amount, if any, owing to each known creditor or depositor and the priority class of his claim under this chapter;

(3) Prepare a schedule of such determinations for filing in the court; and

(4) Provide for legal publication, at least once a week for three successive weeks, a notice of the time when and where the schedule of determinations will be available for inspection; and the date, not sooner than thirty days thereafter, when the Commission or receiver will file the schedule in court.

15.37. Objections to schedule of determinations in settlement of claims.

Within twenty days after the filing of the schedule, any creditor, depositor or stockholder may file with the court an objection to any determination made. Any objections so filed shall be heard and determined by the court, upon such notice to the Commission or receiver and interested claimants as the court may prescribe. If the objection is sustained the court shall direct an appropriate modification of the schedule.

15.38. Partial distributions to claim holders authorized--Final distribution.

After filing a schedule the Commission or receiver may, from time to time, make partial distribution to the holders of claims which are undisputed or have been allowed by the court, if a proper reserve is established for the payment of disputed claims. As soon as is practicable after the determination of all objections the Commission or receiver shall make final distribution.

15.39. Priority of claims in liquidation proceedings.

The following claims shall have priority:

(1) First, public deposits;

(2) Then, obligations incurred by the Commission or receiver;

(3) Then, total deposits of each depositor;

(4) Then, all taxes due on a pro rata basis;

(5) Then, wages and salaries of officers and employees earned during the three-month period preceding the Commission 's possession in an amount not exceeding the normal amount of compensation due;

(6) Then, fees and assessments due to the Commission on a pro rata basis;

(7) Then, all other claims on a pro rata basis exclusive of claims by holders of capital notes and debentures.

15.4. Payment of claims not filed within time prescribed.

After the payment of all claims filed within the time prescribed by this chapter, the Commission or receiver shall pay all other legal claims to the extent of remaining available assets.

15.41. Pro rata payment of claims authorized.

If the sum available for any class is insufficient to provide payment in full, such sum shall be distributed to the claimants in the class on a pro rata basis.

15.42. Distribution of assets remaining after liquidation.

When the Commission or receiver has liquidated a bank, any assets remaining after all claims have been paid shall be distributed to the stockholders in accordance with their respective interests.

15.43. Disposition of unclaimed funds after liquidation.

Unclaimed funds remaining after the completion of the liquidation shall be transferred to The Public Bank of The Catawba Nation for disposal or retention.

15.44. Accounting after liquidation--Cancellation of charter--Order and certificate of dissolution.

When the assets have been distributed in accordance with this chapter, the Commission or receiver shall file an account with the court. Upon approval thereof, the Commission or receiver shall be relieved of liability in connection with the liquidation and the court shall cancel the charter and enter an order of dissolution.

15.45. Instruments affecting real estate executed on behalf of insolvent banks validated.

All real estate mortgages, assignments and satisfactions of real estate mortgages and all assignments of sheriff's certificates of sale and all sales made and deeds executed by a receiver of an insolvent suspended national bank, by the board of trustees or local liquidation committee or corporation of an insolvent suspended bank, or by the Commission, in charge of an insolvent suspended bank or by a duly appointed, qualified and acting examiner in charge of such insolvent suspended bank, are hereby legalized, cured and validated.

CHAPTER 16

MONEY TRANSMISSION

Section Titles

16.11 Criminal history background check required.

16.12 Application for license--Form--Contents.

16.13 Corporate applicants--Additional requirements.

16.14 Noncorporate applicants--Additional requirements.

16.15 Waiver of license application requirements.

16.16 Application fee.

16.17 Applicant--Investigation by Commission.

16.18 Denial of application--Request for hearing.

16.19 Annual report and renewal fee.

16.20 Time for filing renewal application, report, and fee.

16.21 Limit of licensee's liability.

16.22 Written report of certain events required.

16.23 Notice of proposed change of control--Investigation--Approval of change.

16.24 Persons exempt from change of control requirements--Notice.

16.25 Public offering of securities exempt from change of control requirements.

16.26 Request for determination on change of control.

16.27 On-site examinations--Acceptance of report by other examining agency--Waiver with self-examination.

16.28 Request for financial data or on-site examination upon reasonable basis to believe licensee in noncompliance.

16.29 Records required and open to inspection.

16.30 Confidentiality of information--Exception.

16.31 Authorized delegate--Written contract required--Contents.

16.1. Definition of terms.

Terms used in this chapter mean:

(1) "Applicant," any person filing an application for a license under this chapter;

(2) "Authorized delegate," any entity designated by the licensee under the provisions of this chapter to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee;

(3) "Control," ownership of, or the power to vote, twenty-five percent or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the person's interest the interest of any other person controlled by such person or by any spouse, parent, or child of such person;

(4) "Controlling person," any person in control of a licensee;

(5) "Electronic instrument," any card or other tangible object for the transmission or payment of money that contains a microprocessor chip, magnetic stripe, or other means for the storage of information, that is prefunded, and for which the value is decremented upon each use. The term does not include a card or other tangible object that is redeemable by the issuer in goods or services;

(6) "Executive officer," the licensee's president, chair of the executive committee, senior officer responsible for the licensee' s business, chief financial officer, and any other person who performs similar functions;

(7) "Key shareholder," any person, or group of persons acting in concert, who is the owner of twenty-five percent or more of any voting class of an applicant's stock;

(8) "Licensee," any person licensed pursuant to this chapter;

(9) "Material litigation," any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders, or similar documents;

(10) "Monetary value," any medium of exchange, whether or not redeemable in money;

(11) "Money transmission," engagement in the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location within or outside the United States by any means, including wire, facsimile, or electronic transfer;

(12) "Nationwide mortgage licensing system and registry," a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators and other regulated entities;

(13) "Outstanding payment instrument," any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any payment instrument issued by the licensee which has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the licensee;

(14) "Payment instrument," any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term, payment instrument, does not include any credit card voucher, any letter of credit, or any instrument which is redeemable by the issuer in goods or services;

(15) "Remit," either the direct payment of the funds to the licensee or its representatives authorized to receive those funds, or the deposit of the funds in a bank, credit union, savings and loan association, or other similar financial institution in an account specified by the licensee;

(16) "Security device," any surety bond, irrevocable letter of credit, or similar security device;

(17) "Stored value," monetary value that is evidenced by an electronic record. Stored value does not include any item that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

16.2. Permissible investments defined.

For the purposes of this chapter, the term “permissible investments” means any of the following:

(1) Cash;

(2) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(3) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the Federal Reserve System;

(4) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(5) Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest of

the United States, or any obligations of any state, municipality, or any political subdivision thereof;

(6) Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities, or a fund composed of one or more permissible investments as set forth in this section;

(7) Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;

(8) Receivables which are due to a licensee from its authorized delegates, which are not past due or doubtful of collection; or

(9) Any other investments or security device approved by the Commission.

16.3. Entities exempt from chapter.

This chapter does not apply to:

(1) The United States or any department, agency, or instrumentality thereof;

(2) The United States Post Office;

(3) An Indian Tribe, state, or any political subdivisions thereof;

(4) Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States, and any subcontractor, agent, or independent contractor that sells payment instruments issued by any such entity or sells such entity's money transmission services on behalf of such entity;

(5) A chartered trust company under this Title;

(6) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof;

(7) An operator of a payment system to the extent that the system provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers; and

(8) An agent appointed by a payee to collect and process payment as the agent of the payee, if the agent can demonstrate that:

(a) A written agreement exists between the payee and the agent directing the agent to collect and process payments on the payee's behalf;

(b) The payee holds the agent out to the public as accepting payments on the payee's behalf; and

(c) Payment is treated as received by the payee upon receipt by the agent so there is no risk of loss to the individual initiating the transaction if the agent fails to remit the funds to the payee.

16.4. License to engage in business of money transmission required.

No person or entity, except those exempted under this chapter, may engage in the business of money transmission in the jurisdiction of the Nation without obtaining a license in accordance with this chapter and undergoing a criminal background investigation. A person is engaged in providing money transmission if the person provides those services within or from the Nation's jurisdiction, including any person who has no physical presence in the jurisdiction. Each person subject to this section shall be licensed under and maintain a unique identifier through the nationwide mortgage licensing system and registry.

16.5. Single license to conduct business at multiple locations--Authorized delegates.

A licensee may conduct its business at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee.

Any authorized delegate of a licensee, acting within the scope of authority conferred by a written contract as described in this chapter, is not required to become licensed pursuant to this chapter. However, any such authorized delegate is subject to all other relevant portions of this chapter.

16.6. Minimum capital required.

Each licensee under this chapter shall at all times have liquid capital of not less than one hundred thousand dollars, calculated in accordance with generally accepted accounting principles and subject to confirmation by the Commission.

16.7. Qualification to do business of corporate and noncorporate applicants and licensees.

Every corporate applicant, at the time of filing of an application for a license under this chapter and at all times after a license is issued, shall be in good standing in the jurisdiction of its incorporation. All noncorporate applicants shall, at the time of the filing of an application for a license under this chapter and at all times after a license is issued, be registered or qualified to do business in the jurisdiction of the Nation.

16.8. Security device or deposit required.

Each application shall be accompanied by a security device acceptable to the Commission in the amount of one hundred thousand dollars. The Commission may increase the amount of the security device to a maximum of five hundred thousand dollars upon the basis of the impaired financial condition of a licensee, as evidenced by a reduction in net worth, financial losses, or other relevant criteria. The security device shall be in a form satisfactory to the Commission and shall run to the Nation for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with the sale and issuance of payment instruments or the transmission of money, or both. In the case of a surety bond, the aggregate liability of the surety may not exceed the principal sum of the bond. Any claimant against the licensee may bring suit directly on the security device or the Commission may bring suit on behalf of any claimant, either in one action or in successive actions.

In lieu of a security device or of any portion of the principal thereof, as required by this section, the licensee may deposit with the Commission, or with such banks as the licensee may designate and the Commission may approve, cash, interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of a state, or of a city, county, school district, or instrumentality of a state, or guaranteed by as state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the security device or portion thereof. The securities or cash shall be deposited as provided in this section and held to secure the same obligations as would the security device, but the depositor is entitled to receive all interest and dividends thereon, has the right, with the approval of the Commission, to substitute other securities for those deposited, and shall be required so to do on written order of the Commission made for good cause shown.

No security device may be cancelled without thirty days' written notice to the Commission. Cancellation does not affect any liability incurred or accrued during the period the security device was in effect.

16.9. Security after licensee ceases operations.

The security device shall remain in place for five years after the licensee ceases money transmission operations in the Nation’s jurisdiction. However, the Commission may permit the security device to be reduced or eliminated prior to that time to the extent that the amount of the licensee's payment instruments outstanding are reduced. The Commission may also permit a

licensee to substitute a letter of credit or other form of security device for the security device in place at the time the licensee ceases money transmission operations.

16.1. Investments required.

Each licensee under this chapter shall at all times possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments and stored value issued or sold by the licensee in the United States. This requirement may be waived by the Commission if the dollar volume of a licensee's outstanding payment instruments and stored value does not exceed the security devices posted by the licensee.

Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee.

16.11. Criminal history background check required.

Each applicant for licensure under this chapter, except publicly traded corporations and their subsidiaries, shall provide to the nationwide mortgage licensing system and registry a complete set of the applicant's fingerprints for submission to the Federal Bureau of Investigation and any other government agency authorized to receive fingerprints for the purposes of a tribal, state, national, and international criminal history background check prior to permanent licensure of the applicant. The Commission may require a state and federal criminal history background check for any licensee who is the subject of a disciplinary investigation. The failure to submit or cooperate with the criminal history background check under this section may result in denial of an application or revocation of a license. The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal history background check.

16.12. Application for license--Form--Contents.

Each application for a license under this chapter shall be made in writing on a form prescribed by the Commission that includes:

(1) The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of business, and the location of the applicant's business records;

(2) The history of the applicant's material litigation for the preceding five-year period;

(3) A complete set of the applicant's fingerprints and a signed waiver authorizing the Commission to conduct a criminal history background check of the applicant;

(4) A description of the business activities conducted by the applicant and a history of operations;

(5) A description of the business activities in which the applicant seeks to be engaged;

(6) A list identifying the applicant's proposed authorized delegates, if any, at the time of the filing of the application;

(7) A sample authorized delegate contract, if applicable;

(8) A sample form of payment instrument, if applicable;

(9) Each location at which the applicant and its authorized delegates, if any, propose to conduct the licensed activities; and

(10) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which the payment instruments will be payable.

16.13. Corporate applicants--Additional requirements.

In addition to the requirements of § 16.12, an applicant that is a corporation shall provide:

(1) The date of the applicant's incorporation and state of incorporation;

(2) A certificate of good standing from the jurisdiction in which the applicant was incorporated;

(3) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;

(4) The name, business and residence address, and employment history for the preceding five years of the applicant's executive officers and any officer or manager who will be in charge of the applicant's activities to be licensed;

(5) The name, business and residence address, and employment history for the preceding five years of any key shareholder of the applicant;

(6) The history of material litigation for the preceding five-year period of every executive officer or key shareholder of the applicant;

(7) A complete set of fingerprints and a signed waiver authorizing the Commission to conduct a criminal history background check of each executive officer or key shareholder of the applicant;

(8) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position, and, if available, the applicant's audited financial statements for the preceding two-year period. For an applicant that is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the preceding two-year period, or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the preceding three years in lieu of the applicant's financial statements. For an applicant that is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's regulator outside the United States may be submitted to satisfy the requirements of this subdivision; and

(9) A copy of all filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the preceding year.

16.14. Noncorporate applicants--Additional requirements.

In addition to the requirements of § 16.12, an applicant that is not a corporation shall provide:

(1) The name, business and residence address, personal financial statement, and employment history for the preceding five years, of each principal of the applicant and the name, business and residence address, and employment history for the preceding five years of any other person who will be in charge of the applicant's activities to be licensed;

(2) The place and date of the applicant's registration or qualification to do business;

(3) The history of material litigation for the preceding five-year period for each individual having any ownership interest in the applicant and each person who exercises supervisory responsibility with respect to the applicant's business activities;

(4) A complete set of fingerprints and a signed waiver authorizing the Commission to conduct a criminal history background check for each person having any ownership interest in the applicant and each person who exercises supervisory responsibility with respect to the applicant's business activities; and

(5) A copy of the applicant's audited financial statements, including balance sheet, statement of income or loss, and statement of changes in financial position, for the current year and, if available, for the preceding two-year period.

16.15. Waiver of license application requirements.

The Commission may, for good cause shown, waive any requirement with respect to any license application or permit a license applicant to submit substituted information in its license application in lieu of the information required. The Commission may in its discretion require an applicant to provide additional information with respect to any license application.

16.16. Application fee.

Each application shall be accompanied by a nonrefundable application fee established by the Commission.

16.17. Applicant--Investigation by Commission.

Upon receiving a complete application, the Commission shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The Commission may conduct an on-site investigation of the applicant, the reasonable cost of which shall be paid by the applicant. If the Commission finds that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by this chapter and has paid the required license fee, it shall issue a license to the applicant authorizing the applicant to engage in the licensed activities until the license expires. If these requirements have not been met, the Commission shall deny the application in writing setting forth the reasons for the denial.

16.18. Denial of application--Request for hearing.

Any applicant aggrieved by a denial issued under this chapter may, within thirty days from the date of written notice of the denial, request a hearing by the Commission.

16.19. Annual report and renewal fee.

A licensee shall pay an annual renewal fee accompanied by a report, in a form prescribed by the Commission, which shall include:

(1) A copy of its most recent audited consolidated annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position, or, in the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated

audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement;

(2) The licensee shall provide the number of payment instruments sold by the licensee, the dollar amount of those instruments, and the dollar amount of those instruments currently outstanding, for the calendar year or fiscal year immediately preceding the renewal period, or as much of this information as is available at the time of filing the renewal application;

(3) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the Commission on any other report required to be filed under this chapter;

(4) A list of the licensee's permissible investments; and

(5) A list of the locations, if any, at which business regulated by this chapter is being conducted by either the licensee or its authorized delegates.

16.2. Time for filing renewal application, report, and fee.

Any application for renewal of a license in accordance with this chapter shall be filed by December first and shall be accompanied by a fee and report as required.

16.21. Limit of licensee's liability.

A licensee's responsibility to any person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized delegate is limited to the amount of money transmitted or the face amount of the payment instrument or stored value purchased.

16.22. Written report of certain events required.

Within fifteen business days of the occurrence of any one of the events listed in this section, a licensee shall file a written report with the Commission describing the event and its expected impact on the licensee's activities. Such events include:

(1) Any material changes in information provided in a licensee's application or renewal report;

(2) The filing for bankruptcy or reorganization by the licensee;

(3) The institution of revocation or suspension proceedings against the licensee by any governmental authority with regard to the licensees' money transmission activities;

(4) Any felony indictment of the licensee or any of its key officers or directors related to money transmission activities; and

(5) Any felony conviction of the licensee or any of its key officers or directors related to money transmission activities.

16.23. Notice of proposed change of control--Investigation--Approval of change.

A licensee shall give the Commission written notice of a proposed change of control within fifteen days after learning of the proposed change of control and request approval of the acquisition. After review of a request for approval, the Commission may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information shall be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application. The Commission shall approve a request for change of control if, after investigation, the Commission determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the interests of the public will not be jeopardized by the change of control.

16.24. Persons exempt from change of control requirements--Notice.

The following persons are exempt from the requirements of § 16.23, but the licensee shall notify the Commission of any such change of control:

(1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the security holders or holders of voting interests of a licensee or person in control of a licensee;

(2) A person that acquires control of a licensee by devise or descent;

(3) A person that acquires control as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law; and

(4) A person that the Commission by rule or order exempts in the public interest.

16.25. Public offering of securities exempt from change of control requirements.

Section 16.23 does not apply to public offerings of securities.

16.26. Request for determination on change of control.

Before filing a request for approval to acquire control, a person may request in writing a determination from the Commission as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the Commission determines that the person would not be a person in control of a licensee, it shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of § 16.23.

16.27. On-site examinations--Acceptance of report by other examining agency--Waiver with self-examination.

The Commission may conduct an annual on-site examination of a licensee upon reasonable notice to the licensee. The Commission may examine a licensee without prior notice if the Commission has a reasonable basis to believe that the licensee is in noncompliance with this chapter. If the Commission concludes that an on-site examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of such examination. The on-site examination may be conducted in conjunction with examinations to be performed by representatives of any governmental agency. The Commission, in lieu of an on-site examination, may accept the examination report of any governmental agency, and reports so accepted are considered for all purposes as an official report of the Commission. The Commission may waive an on-site examination and only require a self-examination or a report prepared by an independent accounting firm. If a licensee conducts a self-examination, the licenses shall provide any information requested under oath and on forms provided by the Commission. The reasonable expenses incurred by the Commission, any governmental agency, or an independent licensed or certified public accountant in making such examination or report shall be borne by the licensee.

16.28. Request for financial data or on-site examination upon reasonable basis to believe licensee in noncompliance.

The Commission may request financial data from a licensee in addition to that required under this chapter or conduct an on-site examination of any authorized delegate or location of a licensee without prior notice to the authorized delegate or licensee if the Commission has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with this chapter. If the Commission examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of such examination. If the Commission examines a licensee's location, the licensee shall pay all reasonably incurred costs of such examination.

16.29. Records required and open to inspection.

Each licensee shall make, keep, and preserve the following books, accounts, and other records for a period of three years and which shall be open to inspection by the Commission:

(1) A record or records of each payment instrument and stored value sold;

(2) A general ledger, which general ledger shall be posted at least monthly, containing all assets, liabilities, capital, income, and expense accounts;

(3) Bank statements and bank reconciliation records;

(4) Records of outstanding payment instruments and stored value;

(5) Records of each payment instrument and stored value paid within the three-year period;

(6) A list of the names and addresses of all of the licensee's authorized delegates; and

(7) Any other records the Commission reasonably requires.

Maintenance of such documents as are required by this section in a photographic, electronic, or other similar form constitutes compliance with this section. Records shall be made accessible to the Commission on seven business days written notice.

16.3. Confidentiality of information--Exception.

All information or reports obtained by the Commission from an applicant, licensee, or authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including all information contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the Commission, or financial statements, balance sheets, or authorized delegate information, are confidential. However, the Commission may disclose confidential information to officials and examiners of other regulatory authorities or to appropriate prosecuting attorneys.

This section does not prohibit the Commission from disclosing to the public a list of persons licensed under this chapter or the aggregated financial data on those licensees.

16.31. Authorized delegate--Written contract required--Contents.

Any licensee desiring to conduct licensed activities through an authorized delegate shall authorize each delegate to operate pursuant to an express written contract. Any such contract shall provide the following:

(1) That the licensee appoints the person as its delegate with authority to engage in money transmission on behalf of the licensee;

(2) That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the Commission; and

(3) That licensees are subject to supervision and regulation by the Commission.

16.32. Standards of conduct of authorized delegate.

An authorized delegate shall adhere to the following standards of conduct:

(1) No authorized delegate may make any fraudulent or false statement or misrepresentation to any party;

(2) All money transmission or sale or issuance of payment instrument activities conducted by an authorized delegate shall be strictly in accordance with the licensee's written procedures provided to the authorized delegate;

(3) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate. The failure of an authorized delegate to remit all money owing to a licensee within the time presented shall result in liability of the authorized delegate to the licensee for the licensee's actual damages;

(4) An authorized delegate is deemed to consent to the Commission's inspection, with or without prior notice to the licensee or authorized delegate, of the books and records of authorized delegates of the licensee if the Commission has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with this chapter; and

(5) An authorized delegate is under a duty to act only as authorized under the contract with the licensee. An authorized delegate who exceeds the authority grant under the contract is subject to cancellation of the contract and further disciplinary action by the Commission.

16.33. Funds received by authorized delegate constitute trust funds.

Any funds, less fees, received by an authorized delegate of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized delegate for transmission shall, from the time such funds are received by such authorized delegate until such time when the funds or an equivalent amount are remitted by the authorized delegate to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any such funds with any other funds or property owned or controlled by the authorized delegate, any commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

16.34. Report of theft or loss.

An authorized delegate shall report to the licensee the theft or loss of payment instruments and stored value within twenty-four hours from the time the authorized delegate knew or should have known of such theft or loss.

16.35. Suspension or revocation of license.

The Commission may suspend or revoke a licensee's license if it finds that:

(1) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying such application;

(2) The licensee's net worth becomes inadequate and the licensee, after ten days written notice from the Commission, fails to take such steps as the Commission deems necessary to remedy such deficiency;

(3) The licensee violates any material provision of this chapter or any rule or order promulgated by the Commission under authority of this chapter;

(4) The licensee is convicted of a violation of any anti-money laundering statute or is subject to an enforcement action for a violation of any anti-money laundering statute;

(5) The licensee is conducting its business in an unsafe or unsound manner;

(6) The licensee is insolvent;

(7) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(8) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy;

(9) The licensee refuses to permit the Commission to make any examination authorized by this chapter;

(10) The licensee fails to make any report required by this chapter; or

(11) The competence, experience, character, or general fitness of the licensee indicates that it is not in the public interest to permit the licensee to conduct its business.

16.36. Suspension or revocation of authorized delegate designation.

The Commission may issue an order suspending or revoking the designation of an authorized delegate, if the Commission finds that:

(1) The authorized delegate violated this chapter or a rule adopted or an order issued under this chapter;

(2) The authorized delegate did not cooperate with an examination or investigation;

(3) The authorized delegate engages in fraud, intentional misrepresentation, or gross negligence;

(4) The authorized delegate is convicted of a violation of any anti-money laundering statute or regulation or is subject to an enforcement action for a violation of any anti-money laundering statute or regulation;

(5) The competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services; or

(6) The authorized delegate is engaging in an unsafe or unsound practice. In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the Commission may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, the gravity of the violation of this chapter, and the previous conduct of the authorized delegate.

16.37. Cease and desist order.

If the Commission determines that a violation of this chapter or of a rule adopted or an order issued pursuant to this chapter by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the Commission may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The Commission may issue an order against a licensee to cease and desist from providing money transmission services through an authorized delegate that is the subject of a separate order pursuant to § 16.36. The order becomes effective upon service of it upon the licensee or authorized delegate.

16.38. Administrative proceeding following cease and desist order.

The Commission shall commence an administrative proceeding within twenty days after issuing an order to cease and desist and enter an appropriate order to protect the public interest.

16.39. Consent order.

The Commission may enter into a consent order at any time with a person to resolve a matter arising under this chapter. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative, and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a rule adopted or an order issued under this chapter has been violated.

16.4. Fine for violation of chapter or rule.

The Commission may assess a fine against a person that violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed five hundred dollars per day for each day the violation is outstanding, plus the costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

16.41. Intentional misrepresentations or omissions in records--Engaging in activity without required license--Felony.

Any person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter or that intentionally makes a false entry or omits a material entry in such a record is guilty of a felony. Any person that knowingly engages in any activity for which a license is required under this chapter without being licensed under this chapter is guilty of a felony.

16.42. Order to show cause--Temporary restraining order--Cease and desist order--Administrative proceeding--Judicial review.

If the Commission has reason to believe that a person has violated or is violating any element of this Title, the Commission may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation. In an emergency, the Commission may issue a temporary restraining order. An order to cease and desist becomes effective upon service of it upon the person. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding, and the Commission shall commence an administrative proceeding within twenty days after issuing an order to cease and desist.

16.43. Jurisdiction of the courts.

Any person who engages in business activity regulated by this chapter is deemed to have consented to the jurisdiction of the courts of the Catawba Nation for all actions arising under this chapter.

16.44. Licenses not assignable.

No license granted pursuant to this chapter is assignable without the advance consent of the Commission.

16.45. Promulgation of rules.

The Commission may promulgate rules to establish the process for conducting background investigations, for the conduct of examinations, the reporting of information required by this chapter, and the process for the suspension or revocation of a license issued by the Commission.

16.46. Use of nationwide mortgage licensing system and registry as information channeling agent.

The Commission may use the nationwide mortgage licensing system and registry or other similar resource as a channeling agent for requesting information from and distributing information to the United States Department of Justice and any state and federal regulatory official or agency with money transmission industry oversight authority as deemed necessary by the Commission to carry out the responsibilities of this chapter.

16.47. Collection and maintenance of records and processing of fees.

The Commission may establish a relationship or enter into a contract with the nationwide mortgage licensing system and registry or an entity designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to any licensee or person subject to the provisions of this chapter.

16.48. Confidentiality of information provided to nationwide mortgage licensing system and registry.

The following provisions apply to the sharing of information collected and retained by the Commission during the administration of this chapter:

(1) The provisions of § 16.30 regarding privacy or confidentiality apply to any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including any rule of a federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry or similar data resource. The information and material may be shared with a state or federal regulatory official who has money transmission industry oversight authority without the loss of privilege or the loss of confidentiality protections by federal law or § 16.30; and

(2) No information or material that is subject to privilege or confidentiality pursuant to this section is subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry regarding the information or material is waived, in whole or in part, by the person to whom the information or material pertains.

This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, money transmitters that is included in the nationwide mortgage licensing system and registry for access by the public.

CHAPTER 17
THE PUBLIC BANK OF THE CATAWBA NATION

Section Titles

17.15. Interest Rates and Fees for Services.

17.16. Deposits by the Bank.

17.17. Loans to General Fund Authorized.

17.18. Sovereign Lands Fund.

17.19. Loans to Native American-Owned and Small Businesses.

17.2. Revolving Loan Fund - Requirements.

17.21. Limitations on Loans by the Bank - Disclosure of Interests.

17.22. Name for Conduct of Business and Execution of Instruments.

17.23. Examinations and Audit Reports.

17.24. Digital Currency and Electronic Fund Transfer Systems.

17.25. Confidentiality of Bank Records.

17.26. Bank as Custodian of Securities.

17.27. Higher Education Savings Plan.

17.28. Health Technology Loan Fund.

17.29. Health Facility and Infrastructure Loan Fund.

17.3. Residential Mortgages.

17.31. Emergency Rebuilding Loan Program.

17.01. Establishment and Purpose of The Public Bank of The Catawba Nation.

The Public Bank of The Catawba Nation, hereinafter referred to as the Bank, is established as a governmental financial institution for the purpose of promoting sovereignty, economic development, commerce, access to capital, and the strengthening of communities within the territory of The Catawba Nation ("Nation"). The Bank shall endeavor to address and facilitate the financial needs of traditionally underserved Native American and rural communities, partner with governmental agencies and private enterprise to create economic opportunities, and utilize efficient financial systems and technologies for the advancement of human security for the Nation's people.

17.02. Banking Commission to Operate Bank.

The Banking Commission established in this Title shall operate, manage, and control the Bank, establish and maintain its places of business (of which the principal place must be within the

territory of the Nation), and make and enforce orders, rules, regulations, bylaws, policies, and procedures for the transaction of its business. The powers of the Banking Commission and the functions of the Bank shall be implemented through actions taken and policies adopted by the Banking Commission.

17.03. Business of Bank.

The business and financial transactions of the Bank may include anything that any bank, bank holding company, or similar financial institution lawfully may do, consistent with the provisions of this Chapter. The Bank may join and participate in Tribal, federal, state, international, and private sector financial programs and systems. This Section shall not limit or qualify either the powers of the Banking Commission or the functions of the Bank as defined in this Chapter.

17.04. Issuance of Charters.

In conformance with applicable laws of the Nation, the Bank may issue charters for the formation and operation of banks, other financial institutions, and related enterprises within the jurisdiction of the Nation. The Banking Commission shall establish requirements and procedures for the issuance of charters, which shall be consistent with facilitating the purposes set forth in this Chapter.

17.05. Powers of the Bank.

The Bank may:

1. Make, purchase, guarantee, or hold loans:

    a. To Tribal, state, or federally chartered lending agencies or institutions or any other financial service institutions.
    b. To holders of Bank certificates of deposit and savings accounts, in amounts up to ninety percent of the value of the certificates and savings accounts offered as security.
    C. To enrolled citizens of the Nation, if the loans are secured by recorded security interests giving the Bank a first lien priority upon the loan collateral approved by the Banking Commission.
    d. That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.
    e. That are eligible to be guaranteed under financial programs established by the Nation or programs in which the Nation is a participant.
    f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located within the jurisdiction of the Nation.
    g. To nonprofit organizations that are exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code, when the loans will provide funding for economic or community development within the jurisdiction of the Nation.

h. To nonprofit corporations for the purpose of relending loan funds to Native-owned and/or rural businesses.
i. To finance businesses and community development projects in Tribal and rural areas.
j. Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.
k. To instrumentalities of the Nation or other federally recognized Indian Tribes, Alaska Native organizations, or Native Hawaiian organizations.
l. As otherwise provided by this Chapter or other statutes.
M. If the Bank is participating in a loan and the Bank deems it in the best interests of the Bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by legal action or from the receiver of the participating lender's assets.
n. To an investment company created for completing a trust preferred securities transaction for the benefit of a financial institution located in the jurisdiction of the Nation.

2. Make real estate or business-related loans to facilitate development programs managed or authorized by Tribal, federal, or state government agencies.

3. Purchase participation interests in loans made or held by banks, bank holding companies, state-chartered or federally chartered lending agencies or institutions, any other financial institutions, or any other entity that provides financial services and that meets underwriting standards that are generally accepted by financial regulatory agencies.

4. Invest its funds:
a. In conformity with policies established by the Banking Commission.
b. In a public venture capital corporation organized and doing business in the jurisdiction of the Nation.
c. In alternative and venture capital investments and early-stage capital funds, for the purpose of providing funds for investment in enterprises conducting business within the jurisdiction of the Nation. The Bank may allow for third-party management of the funds invested under this Chapter if the management is provided by a qualified party operating within the jurisdiction of the Nation and that has demonstrated fund management experience.

5. Buy and sell federal funds.

6. Lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, Title to which has been acquired by the Bank in any Manner.

7. Acquire real or personal property or property rights by purchase, lease, or other

lawful method of acquisition, and take actions appropriate for the maintenance or improvement of such property.

8. Receive deposits from any source and deposit its funds in any bank or other financial institution.

9. Purchase mortgage loans on residential real property owned by citizens of or located within the jurisdiction of the Nation.

1. Perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the stated purposes and the powers expressly granted or necessarily implied in this Chapter.

17.06. Bank Advisory Board.

To obtain expert guidance in furtherance of the purposes for which the Bank was created, the Banking Commission may appoint an Advisory Board to the Bank. The Banking Commission shall define the size, composition, experience, and scope of duties of the Advisory Board to facilitate the purposes of the Bank as established in this Chapter. The Advisory Board to the Bank may provide information and undertake tasks as directed by the Banking Commission, including but not limited to:

1. Meeting regularly with the management of the Bank to review the Bank's operations and provide recommendations to the Banking Commission relating to improved management performance, internal controls, procedures, and operating policies of the Bank.
2. Making recommendations to the Banking Commission relating to the establishment of additional business opportunities and objectives for the operation of the Bank.
3. Making recommendations concerning the appointment of officers of the Bank.

17.07. Banking Commission Appointment of President and Employees.

The Banking Commission shall appoint a President of the Bank, and may appoint and employ such subordinate officers, employees, and agents as it may judge expedient and in the interests of the Bank, and shall define the duties, designate the Titles, and fix the compensation of all such persons. The Banking Commission may designate the President or other officers or employees as its agent for functions of the Bank, subject to its supervision, limitation, and control.

17.08. Removal of Appointees and Employees.

The Banking Commission may remove and discharge any and all persons appointed in the exercise of the powers granted by this Chapter, whether by the Banking Commission or by the

President of the Bank. All appointments and removals shall be made as the Banking Commission deems fit to promote the purposes and operations of the Bank.

17.09. Capital of Bank.

The Banking Commission shall establish and maintain a level of capital within the Bank sufficient to support the Bank's operations, absorb losses and declines in asset values, and provide appropriate protection to depositors and debt holders within the Bank's constituency. The Banking Commission shall provide an annual report to the government of the Nation regarding the capital held by the Bank, including the amount, allocations, and status of claims and liabilities.

17.1. Banking of Nation Funds - Income of the Bank.

Governmental funds of the Nation may be deposited in the Bank by the persons having control of such funds or otherwise deposited in accordance with the Nation's constitutional and statutory provisions. All income earned by the Bank for its own account from such funds shall be credited to and become a part of the revenues and income of the Bank.

17.11. Nonliability of Officers and Sureties after Deposit.

Whenever governmental funds of the Nation or other government are deposited in the Bank, the governmental official making the deposit and the sureties on the bond of every such official shall be exempt from all liability by reason of loss of any such funds while deposited with the Bank.

17.12. Deposits.

Subject to any limitations or requirements established by the Banking Commission, the Bank may receive and maintain deposits from any lawful source and transact authorized business with any eligible person or legal entity.

17.13. Guaranty of Deposits - Exemption from Taxation.

All deposits in the Bank shall be guaranteed by the Nation, and are exempt from taxation except as specifically described within the laws of the Nation.

17.14. Clearinghouse Status.

For banks and financial institutions that make the Bank a reserve depositary, the Bank may perform the functions and render the services of a clearinghouse, including all facilities for providing domestic and foreign exchange, and may rediscount paper, on such terms as the Banking Commission shall provide.

17.15. Interest Rates and Fees for Services.

The rates of interest paid and charged by the Bank, and the fees assessed for services provided by the Bank, shall be established by the Banking Commission at such times and in such amounts as to facilitate the purposes and business of the Bank.

17.16. Deposits by the Bank.

Subject to any limitations or requirements established by the Banking Commission, the Bank may maintain deposits and transact authorized business with any lawfully organized bank or financial institution.

17.17. Loans to General Fund Authorized.

When deemed appropriate by the Nation's legislature and approved by the Banking Commission, the Bank may make loans to the Nation's general fund at such rates of interest as the Banking Commission may prescribe. The Banking Commission shall establish a repayment plan for the repayment of the principal upon maturity and the interest when due.

17.18. Sovereign Lands Fund.

When deemed appropriate by the Nation's legislature and approved by the Banking Commission, the Bank may make loans and provide other assistance to the Nation for the purpose of acquiring lands that will restore or enhance the sovereign territory and jurisdiction of the Nation, including but not limited to lands that will be taken into government trust status. The Banking Commission shall establish a repayment plan for the repayment of the loan principal upon maturity and the interest when due.

17.19. Loans to Native American-Owned and Small Businesses.

When deemed appropriate by the Banking Commission, the Bank may participate in or make loans to Native American-owned and small business enterprises operating within the jurisdiction of the Nation, at such rates of interest as the Banking Commission may prescribe. The Banking Commission shall establish terms for loan security, repayment of the principal upon maturity, and payment of interest when due. The size qualifications for an eligible small business enterprise shall be consistent with the laws and regulations of the Nation, or the applicable standards established by the United States Small Business Administration if not inconsistent with the laws of the Nation.

17.2. Revolving Loan Fund - Requirements.

A revolving loan fund may be maintained in the Bank for the purpose of making or participating in loans to facilitate economic or community development projects within the jurisdiction of the Nation. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans made from the fund shall be in accordance with this Section.

1. The revolving loan fund and loans made from the fund must be administered and supervised by the Bank. The Bank may deduct a service fee for administering the fund from interest payments received on loans. An application for a loan from the fund must be made to the Bank and, upon approval, loans must be made from the fund in accordance with this Section.
2. A loan made from the fund must be adequately secured and collateralized as determined by the Banking Commission. The Bank may undertake all necessary acts and may establish additional terms and conditions deemed necessary to make a loan under this Section. A loan made from the fund must have a first-position or equivalent security interest in the pledged collateral.
3. A loan made from the fund must have either a fixed or variable rate of interest not greater than the Bank's current base interest rate. Variable rates shall be adjusted annually on the anniversary date of the loan.
4. The Banking Commission shall retain a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, shall be paid for by the fund.
5. The Banking Commission shall adopt appropriate policies to implement this Section.

17.21. Limitations on Loans by the Bank - Disclosure of Interests.

Notwithstanding any other provision of law, the Bank may not make any loan or otherwise give its credit to a member of the Banking Commission during the member's term on the Banking Commission. Before taking office, a member of the Banking Commission shall file a statement with the Bank indicating any personal interest the member has in any loan or loan application in existence or pending at any time during the member's term on the Banking Commission.

17.22. Name for Conduct of Business and Execution of Instruments.

The business of the Bank shall be conducted under the name of "The Public Bank of The Catawba Nation", and title to property pertaining to the operation of the Bank shall be obtained and conveyed in the same name. Within the scope of authority granted by the Banking Commission, designated officers may execute instruments on behalf of the Bank, including any instrument granting, conveying, or otherwise affecting any interest in or lien upon real or personal property. Other officers or employees of, and legal counsel to, the Bank may execute instruments on behalf of the Bank when authorized by the Banking Commission.

17.23. Examinations and Audit Reports.

The Banking Commission shall retain an independent certified public accounting firm for an annual audit of the Bank in accordance with generally accepted government auditing standards. One or more auditors shall conduct an annual audit of the separate programs and funds administered by the Bank. The auditor(s) selected shall prepare an audit report that includes financial statements presented in accordance with the audit and accounting guide for banks and savings institutions issued by the American Institute of Certified Public Accountants. The auditor

also shall prepare audited financial statements for inclusion in the comprehensive annual financial report for the Bank. The auditor shall report the results of the audit to the Banking Commission and to the Nation. The Bank or its separate programs and funds shall pay the costs of the audit.

17.24. Digital Currency and Electronic Fund Transfer Systems.

The Bank may establish, under such rules and regulations as adopted by the Banking Commission, a system to provide digital currency and electronic fund transfer services to its customers and to the customers of Tribally-chartered, state-chartered, and federally-chartered banks, and to other financial institutions otherwise authorized to utilize the services of such systems, to acquire such equipment as is necessary to establish the systems, and to implement reasonable charges for services rendered to other institutions hereunder as may be established by the Banking Commission.

17.25. Confidentiality of Bank Records.

The following records of the Bank are confidential:

1. Commercial or financial information of a customer, whether obtained directly or indirectly, except for routine credit inquiries or unless required by due legal process. As used in this Section, "customer" means any person who has transacted or is transacting business with, or has used or is using the services of, the Bank, or for whom the Bank has acted as a fiduciary with respect to trust property.
2. Internal or interagency communications which would not be available by law to a party other than in litigation with the Bank.
3. Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a governmental agency responsible for regulation or supervision of any Bank activity.
4. Information obtained from or provided to the Nation or third parties that is not subject to public disclosure under the laws of the Nation.
5. Reports by a Bank officer or member of the Banking Commission concerning personal financial statements.

17.26. Bank as Custodian of Securities.

In accordance with policies and limitations established by the Banking Commission, the Bank may serve as the custodian of securities that are provided for deposit with the Bank.

17.27. Higher Education Savings Plan.

The Bank may establish and adopt rules to administer, manage, promote, and market a higher education savings plan. The Bank shall ensure that the higher education savings plan is maintained in compliance with federal Internal Revenue Service standards. The Bank, as trustee of the higher education savings plan, may impose an annual administrative fee to

recover expenses incurred in connection with operation of the plan, support the functions of the Bank related to the educational mission of the Bank, or defray the expenses of education as defined by Section 529 of the Internal Revenue Code. Administrative fees received by the Bank shall on a continuing basis be used as provided in this Section.

17.28. Health Technology Loan Fund.
The Bank may establish and adopt rules to administer, manage, promote, and market a health technology loan fund for the purpose of providing low-interest loans to health care entities to assist those entities in improving health care access and services within the jurisdiction of the Nation.

1. The Bank may make loans from this fund to health care entities as approved by public health officials designated by the Nation.
2. The Bank shall administer the health technology loan fund, and may deduct a service fee for administering the loan fund maintained under this Section.
3. An application for a loan under this Section must be made in coordination with Nation's designated public health office. The public health office, in collaboration with the Banking Commission, may approve the application of a qualified applicant that meets the health services criteria established by the public health office.
4. The Bank may establish the terms, interest rate, repayment period, and other requirements for loans issued by the health technology loan fund.

17.29. Health Facility and Infrastructure Loan Fund.
The Bank may establish and administer a loan program to provide loans to conduct construction of projects that improve the health care and related public infrastructure within the jurisdiction of the Nation. The projects may include land purchases and the purchase, lease, construction, or improvement of any structure or facility consistent with the purposes of this Section.

1. In order to be eligible under this loan program, the applicant must be the governing board of the health care facility or other health service organization. The application must:
a. Detail the proposed construction project;
b. Demonstrate the need, benefit, and long-term viability of the project for promoting public health within the Nation; and
c. Include financial information as the Bank may deem appropriate to determine eligibility, such as the basis for loan repayment and inclusion of alternative financing methods.
2. A loan provided under this Section shall include an interest rate and length of term established by the Banking Commission.
3. The fund may be established as a revolving fund, with moneys transferred into the fund, interest on moneys in the fund, and collections of principal and interest on loans from the fund accruing to the Bank on a continuing basis for the purpose of providing loans under this Section.

4. The Banking Commission shall retain independent auditors to audit the fund on an annual basis, with the cost of the audit and any other actual costs incurred by the Bank on behalf of the fund paid from the fund.

17.3. Residential Mortgages.
The Bank may establish a loan program under which the Bank may originate residential mortgages for real property located within the jurisdiction of the Nation, other Tribal jurisdictions, and rural areas where private sector mortgage loan services are not reasonably available. The Bank may coordinate with other financial institutions to assist in processing loan applications, gathering required information, ordering required legal documents, and other actions required for administering loans.

1. Loans issued through a residential mortgage program established under this Section must be for an owner-occupied primary residence.
2. The Bank may sell or transfer eligible mortgage loans to housing finance agencies operated by Tribal, state, or federal government entities.

17.31. Emergency Rebuilding Loan Program.
The Bank may maintain a loan fund to make or participate in loans to citizens of the Nation and persons residing within the jurisdiction of Nation affected by a governmentally declared disaster or emergency, for the purpose of rebuilding the resident's home, rebuilding nonowner-occupied property, or for purchasing a new home or utilizing a housing unit in response to the disaster. For a resident rebuilding the resident's damaged home or purchasing a new home, loan proceeds disbursed under this program may be used for debt service, debt retirement, or other credit obligations in such amounts or percentages as the Banking Commission shall establish. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans made from the fund are appropriated for the purpose of providing loans in accordance with this Section.

1. The Bank shall administer and supervise the loan fund and loans made from the fund. The Bank may deduct from interest payments received on loans a service fee for administering the fund for the Bank and any originating or participating financial institutions. An application for a loan from the fund must be made to the Bank or originating financial institution and, upon approval by the Banking Commission, a loan may be made from the fund in accordance with this Section.
2. For an owner of nonowner-occupied property to qualify for a loan under this Section, the owner of the property must have been the owner at the time of the declared disaster and the number of households in the property rebuilt under this Section must remain the same as before the declared disaster. Except for properties occupied by citizens of the Nation, the owner of nonowner-occupied property shall be eligible for only one loan for nonowner-occupied property under this Section. Loans for nonowner-occupied properties must be secured by the property for which the loan is made. An initial loan made to a homeowner or owner of nonowner-occupied property under this Section from may not exceed the actual amount of documented damage not paid by insurance. For purposes of this Section,

"nonowner-occupied property" means property consisting of one or more rental dwelling units, none of which is occupied by the owner, and does not include hotel or motel accommodations or any other commercial property.

3. A loan from the fund shall have the interest rate and term length established by the Banking Commission.

4. For every loan made from the fund to a homeowner to rebuild or replace that individual's damaged home, principal and interest payments shall be deferred for the first twenty-four (24) months of the loan. There is no deferral of principal and interest payments for a loan for nonowner-occupied property.

5. If subsequent to receiving a loan from the fund, the property for which the loan was made is sold, the balance of the loan and any interest accrued on the loan must be repaid to the fund upon the closing of the sale. If the borrower provides financial evidence satisfactory to the Bank to show that the borrower does not have the financial ability to repay the rebuilders loan in full upon sale of the property, after the sale of the property the Bank may allow the borrower to continue to make payments (or transfer the payment obligation to a third party approved by the Banking Commission) based on the loan terms.

6. The Banking Commission shall contract with a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, shall be paid by the fund.

7. The Bank shall adopt appropriate policies to implement this Section.

CHAPTER 18

SPECIAL PURPOSE DEPOSITORY INSTITUTIONS

Section Titles

18.1. Required initial capital and surplus; additional capital.

18.11. Application for charter; fee; subaccount created.

18.12. Procedure upon filing application.

18.13. Procedure for hearings on charter applications.

18.14. Investigation and examination by Commission.

18.15. Approval or disapproval of application; criteria for approval; action upon application.

18.16. Certificate of authority to commence business required; application; approval or denial; failure to commence business.

18.17. Surety bond; pledged investments; investment income; bond or pledge increases.

18.18. Reports and examinations; supervisory fees; required private insurance or bond.

18.19. Suspension or revocation of charter.

18.2. Continuing jurisdiction.

18.21. Failure of institution; unsound or unsafe condition; applicability of other insolvency and conservatorship provisions.

18.22. Voluntary dissolution of special purpose depository institution; liquidation; reorganization; application for dissolution; filing fee; revocation of charter.

18.23. Failure to submit required report; fees; rules.

18.24. Willful failure to perform duties imposed by law; removal.

18.1. Findings and Policy.

The governing authorities of the Nation find the following:

(i) The rapid innovation of blockchain technology, including the growing use of virtual currency and other digital assets, has resulted in a need for blockchain innovators to be able to access secure and reliable banking services in order to facilitate legitimate and useful development of blockchain services and products in the marketplace;

(ii) Compliance with applicable federal and other laws is critical to ensuring the future growth and reputation of the blockchain and technology industries as a whole;

(vi) Traditional financial institutions often do not have the requisite expertise or familiarity with blockchain technology is required to provide secure and reliable banking services in conjunction with these emerging systems;

(vii) A specialized financial institution that has expertise with customer identification, anti-money laundering, and beneficial ownership requirements could seamlessly integrate these requirements into its operating model; and

(viii) Authorizing special purpose depository institutions to be chartered in the Nation's jurisdiction will provide a necessary and valuable service to blockchain innovators, strengthen the Nation's partnership with the technology and financial industries, and help provide access to capital and financial services for citizens of the Nation.

18.2. Applicability of other provisions.

All other provisions of this Title shall apply to this chapter, except that if any provision of law conflicts with this chapter, this chapter shall control.

18.3. Special purpose depository institutions created as corporations; operating authority; powers; prohibition on lending.

(a) Consistent with this chapter, special purpose depository institutions shall be organized as corporations to exercise the powers set forth in subsection (b) of this section.

(b) Each special purpose depository institution may:

(i) Make contracts as a corporation;

(ii) Sue and be sued;

(iii) Receive notes and buy and sell gold and silver coins and bullion as permitted by federal law;

(iv) Carry on a nonlending banking business for depositors, consistent with subsection (c) of this section;

(v) Provide payment services upon the request of a depositor;

(vi) Make an application to become a member bank of the Federal Reserve system;

(vii) Engage in any other activity that is usual or incidental to the business of banking, subject to the prior written approval of the Commission. The Commission shall not approve a request to engage in an incidental activity if it finds that the requested activity will adversely affect the

solvency or the safety and soundness of the special purpose depository institution or conflict with any provision of this chapter;

(viii) Exercise powers and rights otherwise authorized by law which are not inconsistent with this chapter.

(c) Except as otherwise provided in this subsection, a special purpose depository institution shall not make loans, including the provision of temporary credit relating to overdrafts. A special purpose depository institution may purchase debt obligations pursuant to applicable provisions of this Title.

(d) A special purpose depository institution shall be chartered by the Nation.

(e) As otherwise authorized by this section, the special purpose depository institution may conduct business with depositors outside the jurisdiction of the Nation.

(f) Subject to the laws of the host jurisdiction, a special purpose depository institution may open a branch in another jurisdiction. A special purpose depository institution, including any branch of the institution, may only accept deposits or provide other services under this chapter to depositors engaged in a bona fide business which is lawful under the laws of the Nation, the laws of the host jurisdiction (if any), and federal law.

18.4. Requirements relating to depositors; nature of business.

(a) No depositor shall maintain an account with a special purpose depository institution or otherwise receive any services from the institution unless the depositor meets the criteria of this subsection. A depositor shall:

(i) Be a legal entity other than a natural person;

(ii) Be in good standing with the jurisdiction in which it is incorporated or organized;

(iii) Be engaged in a lawful, bona fide business, consistent with the requirements of this chapter; and

(iv) Make sufficient evidence available to the special purpose depository institution to enable compliance with anti-money laundering, customer identification and beneficial ownership requirements, as determined by the institution.

(b) A depositor meeting the criteria of subsection (a) of this section may be issued a depository account and otherwise receive services from the special purpose depository institution.

(c) In addition to any requirements specified by federal law, a special purpose depository institution shall require that a potential depositor provide reasonable evidence that the person is engaged in a lawful, bona fide business, or is likely to open a lawful, bona fide business within the next six (6) months. As used in this subsection, "reasonable evidence" includes business entity filings, articles of incorporation or organization, bylaws, operating agreements, business plans, promotional materials, financing agreements, or other evidence deemed appropriate by the Commission.

18.5. Required liquid assets.

(a) At all times, a special purpose depository institution shall maintain unencumbered liquid assets valued at not less than one hundred percent (100%) of its depository liabilities.

(b) As used in this section, "liquid assets" means:

(i) United States currency held on the premises of the special purpose depository institution;

(ii) United States currency held for the special purpose depository institution by a Federal Reserve bank or a federally insured financial institution;

(iii) Investments which are highly liquid and obligations of the United States treasury or other federal agency obligations, consistent with rules adopted by the Commission and the ability to promptly honor withdrawal requests from depositors.

18.6. Required contingency account.

(a) A special purpose depository institution shall maintain a contingency account to account for unexpected losses and expenses. A special purpose depository institution may require the payment of contributions from depositors to fund a contingency account. Initial capital approved by the Commission shall constitute compliance with this subsection for the first three (3) years a special purpose depository institution is in operation. After the conclusion of the first three (3) years of operation, a special purpose depository institution shall maintain a contingency account totaling not less than two percent (2%) of the depository liabilities of the special purpose depository institution, provided that the contingency account shall be adequate and reasonable in light of current and prospective business conditions, as determined by the Commission.

(b) A depositor shall obtain a refund of any contingency account contributions made under this section after closing an account with the special purpose depository institution.

18.7. Applicable federal laws.

A special purpose depository institution shall comply with all applicable federal laws, including those relating to anti-money laundering, customer identification, taxes, and beneficial ownership.

18.8. Required disclosures.

(a) A special purpose depository institution shall display on any internet website it maintains, and at each window or place where it accepts deposits, a sign conspicuously stating that deposits are not insured by the federal deposit insurance corporation, if applicable.

(b) Upon opening an account and if applicable, a special purpose depository institution shall require each depositor to execute a statement acknowledging that all deposits at the special purpose depository institution are not insured by the federal deposit insurance corporation. The special purpose depository institution shall permanently retain this acknowledgment.

(c) A special purpose depository institution shall include in all advertising a disclosure that deposits are not insured by the federal deposit insurance corporation, if applicable.

18.9. Formation; articles of incorporation.

(a) Any number of adult persons may form a special purpose depository institution by incorporation. The incorporators shall subscribe the articles of incorporation and transmit them to the Commission as part of an application for a charter under this Title.

(b) The articles of incorporation shall include the following information:

(i) The corporate name;

(ii) The object for which the corporation is organized;

(iii) The term of its existence, which may be perpetual;

(iv) The place where its office shall be located and its operations conducted;

(v) The amount of capital stock and the number of shares;

(vi) The name and residence of each shareholder subscribing to more than ten percent (10%) of the stock and the number of shares owned by that shareholder;

(vii) The number of directors and the names of those who shall manage the affairs of the corporation for the first year; and

(viii) A statement that the articles of incorporation are made to enable the incorporators to submit to the jurisdiction of and avail themselves of the advantages of the laws of the Nation.

(c) Copies of all amended articles of incorporation shall be filed in the same manner as the original articles of incorporation.

(d) The incorporators shall solicit capital prior to filing an application for a charter with the Commission. In the event an application for a charter is not filed or is denied, all capital shall be promptly returned without loss to its contributors.

(e) Subject to applicable federal law, a bank holding company may apply to hold a special purpose depository institution.

18.1. Required initial capital and surplus; additional capital.

(a) The capital stock of each special purpose depository institution chartered under this chapter shall be subscribed for as fully paid stock. A special purpose depository institution shall be chartered with capital stock in a minimum dollar amount approved by the Commission.

(b) No special purpose depository institution shall commence business until the full amount of its authorized capital is subscribed and all capital stock is fully paid in. No special purpose depository institution may be chartered without a paid-up surplus fund of not less than three (3) years of estimated operating expenses or in another amount required by the Commission.

(c) A special purpose depository institution may acquire additional capital prior to the granting of a charter and may report this capital in its charter application.

18.11. Application for charter; fee; subaccount created.

(a) No person shall act as a special purpose depository institution without first obtaining a charter and certificate of authority to operate from the Commission under this chapter.

(b) The incorporators shall apply to the Commission for a charter. The application shall contain the special purpose depository institution's articles of incorporation, a detailed business plan, a comprehensive estimate of operating expenses for the first three (3) years of operation, a complete proposal for compliance with the provisions of this chapter, and evidence of the capital required by the Commission. The Commission may prescribe the form of application by rule.

(c) Each application for a charter shall be accompanied by an application fee established by the Commission pursuant to rule. The application fee shall be credited to the special purpose depository institutions subaccount created by subsection (d) of this section.

(d) The special purpose depository institutions subaccount is created for administration and use by the Commission. Funds in the subaccount shall be used by the Commission to supervise special purpose depository institutions and to otherwise carry out the duties specified by this chapter. Funds in the subaccount are continuously appropriated to the subaccount and shall not lapse at the end of any fiscal period. For purposes of accounting and investing only, the special purpose depository institutions subaccount shall be treated as a separate account from other accounts maintained by the Commission.

18.12. Procedure upon filing application.

Upon receiving an application for a special purpose depository charter, the Commission shall notify the applicants in writing within thirty (30) calendar days of any deficiency in the required information or that the application has been accepted for filing. The Commission may convene hearings or take other appropriate investigative action until is satisfied that all required information has been furnished.

18.13. Procedure for hearings on charter applications.

A hearing for a charter application shall be conducted in accordance with the requirements for Banking Commission hearings set forth in this Title.

18.14. Investigation and examination by Commission.

(a) Upon receiving the articles of incorporation, the application for a charter and other information required by the Commission, the Commission shall make a careful investigation and examination of the following:

(i) The character, reputation, financial standing and ability of the incorporators;

(ii) The character, financial responsibility, banking or other financial experience and business qualifications of those proposed as officers and directors; and

(iii) The application for a charter, including the adequacy and plausibility of the business plan of the special purpose depository institution and whether the institution has offered a complete proposal for compliance with the provisions of this chapter.

(b) The Commission shall document the results of the investigation in its official records.

18.15. Approval or disapproval of application; criteria for approval; action upon application.

(a) Within ninety (90) days after completion of its investigation of an application, the Commission shall render and issue notice to the applicant of its decision on the charter application. The approval decision for an application shall be based on appropriate criteria including:

(i) Whether the character, reputation, financial standing and ability of the incorporators is sufficient to afford reasonable promise of a successful operation;

(ii) Whether the character, financial responsibility, banking or other financial experience and business qualifications of those proposed as officers and directors is sufficient to afford reasonable promise of a successful operation;

(iii) The adequacy and plausibility of the business plan of the special purpose depository institution;

(iv) Compliance with the Commission's capital and surplus requirements;

(v) The special purpose depository institution is being formed for no other purpose than legitimate objectives authorized by law;

(vi) That the name of the proposed special purpose depository institution does not resemble so closely the name of any other financial institution transacting business in the Nation's jurisdiction so as to cause confusion; and

(vii) Whether the applicants have complied with all applicable provisions of the Nation's law.

(b) If necessary, the Commission may either conditionally approve an application by specifying conditions relating to the criteria or may disapprove the application. If the board conditionally approves an application, it shall specify a reasonable timeframe for the applicant to comply with the required conditions. If the Commission disapproves the application, it shall mail notice of the disapproval to the applicants within twenty (20) days of the disapproval.

18.16. Certificate of authority to commence business required; application; approval or denial; failure to commence business.

(a) A special purpose depository institution shall not commence business before receiving a certificate of authority to operate from the Commission. The application for a certificate of authority shall be made to the Commission and shall certify the address at which the special purpose depository institution will operate and that all adopted bylaws of the institution have been attached as an exhibit to the application. The application shall state the identities and contact information of officers and directors. The Commission shall approve or deny an application for a certificate of authority to operate within thirty (30) days after a complete application has been filed. If the Commission denies the application, it shall provide the applicants the reasons for denying the application, and grant the applicants leave to resubmit the application with the necessary corrections.

(b) If an approved special purpose depository institution fails to commence business in good faith within six (6) months after the issuance of a certificate of authority to operate by the Commission, the charter and certificate of authority shall expire. The Commission in its discretion may extend the time within which the special purpose depository institution is required to open for business.

18.17. Surety bond; pledged investments; investment income; bond or pledge increases.

(a) Except as otherwise provided by subsection (b) of this section, a special purpose depository institution shall, before transacting any business, pledge or furnish a surety bond to the Commission to cover costs likely to be incurred in the event of a liquidation or conservatorship of the special purpose depository institution. The amount of the surety bond or pledge of assets under subsection (b) of this section shall be determined by the Commission.

(b) In lieu of a bond, a special purpose depository institution may irrevocably pledge specified capital equivalent to a bond under subsection (a) of this section. Any capital pledged to the Commission under this subsection shall be held in a duly chartered bank or savings and loan association approved in advance by the Commission. All costs associated with pledging and holding such capital are the responsibility of the special purpose depository institution.

(c) The Commission may adopt rules to establish additional investment guidelines or investment options for purposes of the pledge or surety bond required by this section.

(d) In the event of a liquidation or conservatorship of a special purpose depository institution the Commission may, without regard to priorities, preferences or adverse claims, reduce the surety bond or capital pledged under this section to cash immediately and utilize the cash to defray the costs associated with the liquidation or conservatorship.

(e) Income from capital pledged under subsection (b) of this section shall be paid to the special purpose depository institution, unless a liquidation or conservatorship takes place.

(f) Upon evidence that the current surety bond or pledged capital is insufficient, the Commission may require a special purpose depository institution to increase its surety bond or pledged capital by providing not less than thirty (30) days written notice to the institution.

18.18. Reports and examinations; supervisory fees; required private insurance or bond.

(a) The Commission may call for reports verified under oath from a special purpose depository institution at any time the Commission deems necessary to confirm the condition of the institution.

(b) Every special purpose depository institution is subject to the examination of the Commission or its duly appointed examiner. The Commission or examiner shall make a complete and careful examination of the condition and resources of a special purpose depository institution, the mode

of managing institution affairs and conducting business, the actions of officers and directors in the investment and disposition of funds, the safety and prudence of institution management, compliance with the requirements of this chapter and such other matters as the Commission may require. After an examination, the special purpose depository institution shall remit to the Commission payment equal to the total cost of the examination.

(c) A special purpose depository institution shall maintain appropriate insurance or a bond covering the operational risks of the institution, which shall include coverage for directors' and officers' liability, errors and omissions liability and information technology infrastructure and activities liability.

18.19. Suspension or revocation of charter.

The Commission may suspend or revoke the charter of a special purpose depository institution if, after notice and opportunity for a hearing, it determines that:

(i) The special purpose depository institution has failed or refused to comply with a requirement of this Title, an order issued by the Commission, or other legal requirement;

(ii) The application for a charter contained a false statement or material misrepresentation or material omission; or

(iii) An officer, director or agent of the special purpose depository institution, in connection with an application for a charter, examination, report or other document filed with the Commission, knowingly made a false statement, material misrepresentation, or material omission to the Commission or any of its agents.

18.2. Continuing jurisdiction.

If the charter of a special purpose depository institution is surrendered, suspended or revoked, the institution shall continue to be subject to the provisions of this chapter during any liquidation or conservatorship.

18.21. Failure of institution; unsound or unsafe condition; applicability of other insolvency and conservatorship provisions.

(a) If the Commission finds that a special purpose depository institution has failed or is operating in an unsafe or unsound condition that has not been remedied within the time prescribed by an order of the Commission, the Commission may conduct a liquidation or appoint a conservator.

(b) As used in this section:

(i) "Failed" or "failure" means, consistent with rules adopted by the Commission, a circumstance when a special purpose depository institution has not:

(A) Complied with the requirements of this Title;

(B) Maintained a contingency account as required;

(C) Paid, in the manner commonly accepted by business practices, its legal obligations to depositors on demand or to discharge any certificates of deposit, promissory notes or other indebtedness when due.

(ii) "Unsafe or unsound condition" means, consistent with rules adopted by the Commission, a circumstance relating to a special purpose depository institution which is likely to:

(A) Cause the failure of the institution, as defined in paragraph (i) of this subsection;

(B) Cause a substantial dissipation of assets or earnings;

(C) Substantially disrupt the services provided by the institution to depositors;

(D) Otherwise substantially prejudice the depository interests of depositors.

18.22. Voluntary dissolution of special purpose depository institution; liquidation; reorganization; application for dissolution; filing fee; revocation of charter.

(a) A special purpose depository institution may voluntarily dissolve in accordance with the provisions of this section. Voluntary dissolution shall be accomplished by either liquidating the special purpose depository institution or reorganizing the institution into an appropriate business entity that does not engage in any activity authorized only for a special purpose depository institution. Upon complete liquidation or completion of the reorganization, the Commission shall revoke the charter of the special purpose depository institution and afterward, the company shall not use the word "special purpose depository institution" or "bank" in its business name or in connection with its ongoing business.

(b) The special purpose depository institution may dissolve its charter either by liquidation or reorganization. The board of directors shall file an application for dissolution with the Commission, accompanied by a filing fee established by the Commission. The application shall include a comprehensive plan for dissolution setting forth the proposed disposition of all assets and liabilities, in reasonable detail to effect a liquidation or reorganization, and any other plans required by the Commission. The plan of dissolution shall provide for the discharge or assumption of all of the known and unknown claims and liabilities of the special purpose depository institution. Additionally, the application for dissolution shall include other evidence, certifications, affidavits, documents or information as the Commission may require, including but not limited to demonstration of how assets and liabilities will be disposed, the timetable for

effecting disposition of the assets and liabilities and a proposal of the special purpose depository institution for addressing any claims that are asserted after dissolution has been completed. The Commission shall examine the application for compliance with this section, and may conduct a special examination of the special purpose depository institution for purposes of evaluating the application.

(c) If the application is incomplete, the Commission shall return it for completion not later than sixty (60) days after it is filed. If the application is complete, the Commission shall approve or disapprove the application not later than thirty (30) days after it is filed. If the application is approved, the special purpose depository institution may proceed with the dissolution pursuant to the plan outlined in the application, subject to any further conditions the Commission may prescribe. If the special purpose depository institution subsequently determines that the plan of dissolution needs to be amended to complete the dissolution, it shall file an amended plan with the Commission and obtain approval to proceed under the amended plan.

(d) Upon completion of all actions required under the plan of dissolution and satisfaction of all conditions prescribed by the Commission, the special purpose depository institution shall submit a written report of its actions to the Commission. The report shall contain a certification made under oath that the report is true and correct. Following receipt of the report, the Commission shall examine the special purpose depository institution to determine whether all required actions have been taken in accordance with the plan of dissolution and any conditions prescribed by the Commission. If all requirements and conditions have been met, the Commission shall notify the special purpose depository institution in writing that the dissolution has been completed and issue a certificate of dissolution.

(e) If the Commission determines that all required actions under the plan for dissolution, or as otherwise required by the Commission, have not been completed, it shall notify the special purpose depository institution not later than thirty (30) days after this determination, in writing what additional actions shall be taken in order for the institution to be eligible for a certificate of dissolution. The notice shall establish a reasonable deadline for the submission of evidence that additional actions have been taken and the Commission may extend any deadline upon good cause. If the special purpose depository institution fails to file a supplemental report showing that the additional actions have been taken before the deadline, or submits a report that is found not to be satisfactory by the Commission, the Commission shall notify the special purpose depository institution in writing that its voluntary dissolution is not approved.

18.23. Failure to submit required report; fees; rules.

If a special purpose depository institution fails to submit any report required by this chapter or by rule within the prescribed period, the Commission may impose and collect a fee for each day the report is overdue, as established by rule.

18.24. Willful failure to perform duties imposed by law; removal.

(a) Each officer, director, employee or agent of a special purpose depository institution, following written notice from the Commission, is subject to removal upon order of the Commission if the person knowingly or willfully fails to:

(i) Perform any duty required by this act or other applicable law; or

(ii) Conform to any rule or order of the Commission.

CHAPTER 19

FIDUCIARY ACCESS TO DIGITAL ASSETS

Section Titles

19.1. Definitions.

Terms used in this chapter mean:

(1) "Account," any arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user;

(2) "Agent," any attorney-in-fact granted authority under a power of attorney pursuant to applicable law;

(3) "Carries," engages in the transmission of an electronic communication;

(4) "Catalogue of electronic communications," information that identifies each person with whom a user has had an electronic communication, the time and date of the communication, and the electronic address of the person;

(5) "Conservator," any person appointed by a court to manage the estate of a living individual or protected person, including a limited conservator;

(6) "Content of an electronic communication," information concerning the substance or meaning of the communication that has been sent or received by a user; is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and is not readily accessible to the public;

(7) "Court," a court of competent jurisdiction;

(8) "Custodian," any person who carries, maintains, processes, receives, or stores a digital asset of a user;

(9) "Designated recipient," any person chosen by the user of an online tool to administer digital assets of the user;

(10) "Digital asset," any electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record;

(11) "Electronic," relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(12) "Electronic communication," has the meaning set forth in 18 U.S.C. Section 2510 (12);

(13) "Electronic-communication service," any custodian who provides to a user the ability to send or receive an electronic communication;

(14) "Fiduciary," any person who is an original, additional, or successor personal representative, conservator, agent, or trustee;

(15) "Information," data, text, images, videos, sounds, codes, computer programs, software, databases, or similar intelligence of any nature;

(16) "Online tool," any electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person;

(17) "Person," any individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity;

(18) "Personal representative," any executor, administrator, special administrator, or any person who performs substantially the same function under the law governing that person's status other than this chapter;

(19) "Power of attorney," any record that grants an agent authority to act in the place of a principal;

(20) "Principal," any individual who grants authority to an agent in a power of attorney;

(21) "Protected person," any individual for whom a conservator has been appointed, including an individual for whom an application for the appointment of a conservator is pending;

(22) "Record," information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(23) "Remote-computing service," any custodian who provides to the public computer processing services or the storage of digital assets by means of an electronic communications system as defined in 18 U.S.C. Section 2510 (14);

(24) "Terms-of-service agreement," any agreement that controls the relationship between a user and a custodian;

(25) "Trustee," any fiduciary, including a successor trustee, with legal Title to property under an agreement or declaration that creates a beneficial interest in another;

(26) "User," any person who has an account with a custodian;

(27) "Will," includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

19.2. Applicability generally.

The provisions of this chapter apply to:

(1) Any fiduciary acting under a will or power of attorney;

(2) Any personal representative acting for a decedent;

(3) Any conservatorship proceeding; and

(4) A trustee acting under a trust.

19.3. Applicability to custodians and employer assets used by employee.

This chapter applies to a custodian if the user resides in the Nation's jurisdiction or did so at the time of the user's death. This chapter does not apply to any digital asset of an employer used by an employee in the ordinary course of the employer's business.

19.4. User direction for disclosure of digital assets.

Any user may utilize an online tool to direct a custodian to disclose or not to disclose to a designated recipient some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

If a user has not utilized an online tool to give direction under this section, or if the custodian has not provided an online tool, the user may allow for or prohibit in a will, trust, power of attorney, or any other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

A user's direction under this section overrides a contrary provision in any terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service agreement.

19.5. Terms-of-service agreement.

This chapter does not change or impair the right of any custodian or user under a terms-of-service agreement to access and use digital assets of the user. This chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not otherwise provided direction under applicable law.

19.6. Procedure for disclosing digital assets.

If a custodian discloses digital assets of a user under this chapter, the custodian may, at the custodian's sole discretion:

(1) Grant a fiduciary or designated recipient full access to the user's account;

(2) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform any task with which the fiduciary or designated recipient is charged; or

(3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

A custodian need not disclose under this chapter a digital asset deleted by a user.

If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose: a subset limited by date of the user's digital assets; all of the user's digital assets to the fiduciary or designated recipient; none of the user's digital assets; or all of the user's digital assets to the court for review in camera.

19.7. Disclosure of content of electronic communications of deceased user.

If a deceased user consented to or a court directs disclosure of contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the death certificate of the user;

(3) A certified copy of the letter of appointment of the representative or a small estate affidavit or court order;

(4) A copy of the user's will, trust, power of attorney, or other record that provides evidence of the user's consent to disclosure of the content of electronic communications, unless the user provided direction by utilizing an online tool; and

(5) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) Evidence linking the account to the user; or

(c) A finding by a court of competent jurisdiction that:

(i) The user had a specific account with the custodian, identifiable by the information specified in this subdivision;

(ii) Disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Section 2701 et seq., 47 U.S.C. Section 222, or other applicable law;

(iii) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(iv) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

19.8. Disclosure of other digital assets of deceased user.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the death certificate of the user;

(3) A certified copy of the letter of appointment of the representative or a small estate affidavit or court order; and

(4) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) Evidence linking the account to the user;

(c) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(d) A finding by a court of competent jurisdiction that the user had a specific account with the custodian, identifiable by the information specified in subsection (a) or that disclosure of the user's digital assets is reasonably necessary for administration of the estate.

19.9. Disclosure of content of electronic communications of principal.

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) Evidence linking the account to the principal.

19.1. Disclosure of other digital assets of principal.

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) An original or copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) Evidence linking the account to the principal.

19.11. Disclosure of digital assets held in trust when trustee is original user.

Unless otherwise ordered by a court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

19.12. Disclosure of contents of electronic communications held in trust when trustee not original user.

Unless otherwise ordered by a court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the trust instrument or a certification of the trust that includes consent to disclosure of the content of electronic communications to the trustee;

(3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) Evidence linking the account to the trust.

19.13. Disclosure of other digital assets held in trust when trustee not original user.

Unless otherwise ordered by a court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the trust instrument or a certification of the trust;

(3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) Evidence linking the account to the trust.

19.14. Disclosure of assets to conservator of protected person.

After an opportunity for a hearing, a court may grant a conservator access to the digital assets of a protected person. Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and

(3) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(b) Evidence linking the account to the protected person.

19.15. Suspension or termination of account of protected person.

A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

19.16. Fiduciary duties.

The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including: the duty of care, the duty of loyalty, and the duty of confidentiality.

19.17. Fiduciary authority generally.

A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(1) Is subject to the applicable terms of service;

(2) Is subject to other applicable law, including copyright law;

(3) Is limited by the scope of the fiduciary's duties, if a fiduciary; and

(4) May not be used to impersonate the user.

19.18. Fiduciary right of access to digital asset not held by custodian or subject to terms-of-service agreement.

A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

19.19. Fiduciary as authorized user for purposes of computer fraud or unauthorized access law.

A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of any computer fraud or unauthorized computer access law.

19.2. Fiduciary right of access to digital asset.

A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal, or settlor has the right to access the property and any digital asset stored in it, and is an authorized user for the purpose of any computer fraud or unauthorized computer access law.

19.21. Disclosure of information by custodian to fiduciary.

A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

19.22. Request for termination of user's account.

The fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(1) If the user is deceased, a certified copy of the death certificate of the user;

(2) A certified copy of the letter of appointment of the representative or a small estate affidavit, court order, power of attorney, or trust giving the fiduciary authority over the account; and

(3) If requested by the custodian, a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account; evidence linking the account to the user; or a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in this subdivision.

19.23. Custodian compliance.

A custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account not later than sixty days after receipt of information required under this chapter. A fiduciary or designated recipient may apply to a court for an order directing compliance if the custodian fails to comply with the fiduciary's request within sixty days. An order under this section directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. Section 2702.

19.24. Custodian notice to user.

A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

19.25. Denial by custodian of request for disclosure or termination.

A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

19.26. Custodian's ability to require court order.

This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order that specifies that an account belongs to the protected person or principal, specifies that there is sufficient consent from the protected person or principal to support the requested disclosure, and contains a finding required by law other than this chapter.

19.27. Custodian immunity.

A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

END OF TITLE