

Chapter 53C.
Regulation of Banks.

Article 1.

General Provisions.

§ 53C-1-1. Title.

This Chapter shall be known and may be cited as Regulation of Banks and Other Financial Services. (2012-56, s. 4.)

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

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

- (1) All existing banks organized or created under the laws of this State.
- (2) All banks created under the provisions of Article 3 of this Chapter.
- (3) All persons who subject themselves to the provisions of this Chapter.
- (4) All persons who become subject to the penalties provided for in this Chapter as a consequence of violating any of the provisions of this Chapter.

(b) Transactions validly entered into before October 1, 2012, and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, or enforced as required or permitted by any statute amended or repealed by the law by which this act was enacted as though the amendment or repeal had not occurred.

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

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

(e) Any reference in this Chapter to a state or federal law, regulation, or agency shall be deemed to refer to any replacement law or regulation or any successor agency, whether or not this Chapter explicitly provides for that reference. (2012-56, s. 4.)

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

(a) No depository institution organized or created under the laws of this State may operate as a bank except in accordance with this Chapter. Banks established prior to October 1, 2012, may continue operation under their existing organizational documents but shall be subject to all other requirements of this Chapter.

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

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

- (2) Use any sign, letterhead, circular, or Web site content or advertise or communicate in any manner that would lead the public reasonably to believe that it conducts the business of a depository institution or trust institution.
- (c) Upon application by the Commissioner, a court of competent jurisdiction may issue an injunction to restrain any person from violating or from continuing to violate this section. (2012-56, s. 4.)

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

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

- (1) Acquire. – To obtain the right or power to vote or to direct the voting of voting securities of a bank or holding company as follows:
 - a. Through a purchase of or share exchange for shares.
 - b. By reason of an issuance of shares or the exercise of a right under a warrant, option, or convertible security or instrument to acquire shares.
 - c. Pursuant to an agreement or trust or through any similar transaction, event, or contractual right.
- (2) Acting in concert. – Knowing participation in a joint activity or interdependent conscious parallel action toward the common goal of obtaining control of a bank or holding company, whether or not pursuant to an express agreement, including participation in a combination or pooling of voting securities of a bank holding company for such common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.
- (3) Affiliate. – A person that, directly or indirectly, controls, is controlled by, or is under common control with another person. Each member of a group of persons acting in concert shall be deemed an affiliate of the group.
- (4) Bank. – Any corporation, other than a credit union, savings institution, or trust company, that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies, and making loans.
- (5) Bank operating subsidiary. – A subsidiary that is under the control of a bank and engages only in activities in which a bank may engage pursuant to G.S. 53C-5-1.
- (6) Bank premises. – Any improved or unimproved real estate, whether or not open to the public, that is utilized or intended to be utilized by a bank, including additional space to rent as a source of income.
- (7) Bank supervisory agency. – Any of the following agencies:
 - a. The CFPB, FDIC, Federal Reserve Board, OCC, and any successor to these agencies.
 - b. Any agency of another state with primary responsibility for chartering and supervising depository institutions organized under the laws of that state.
 - c. Any agency of a sovereign nation with primary responsibility for chartering and supervising depository institutions organized under the laws of that nation.

- (8) Bankers' bank. – As defined in Regulation D of the Federal Reserve Board, 12 C.F.R. § 204.121.
- (9) Banking laws. – All laws which the Commissioner or the OCOB is authorized to enforce under any applicable statute.
- (10) Board of directors. – A governing board of a company that is responsible for policy, oversight, and compliance.
- (11) Branch. – An office of any bank or a depository institution organized under the banking laws of the United States, another state, or another sovereign nation, other than that depository institution's principal office, in which deposits are received. A branch may also engage in any of the functions or services authorized to be engaged in by the bank of which it is a branch. The term "branch" does not include a non-branch bank business office, automated teller machine, remote deposit facility, remote service unit, customer-bank communications terminal, point-of-sale terminal, automated banking facility or other direct or remote information processing device or machine, whether manned or unmanned, by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank terminal.
- (12) Capital. – An amount equal to the bank's "total capital" as that term is used by the FDIC in 12 C.F.R. Part 325; provided, that if the term "total capital" is replaced by a term including substantially the same elements as "total capital," the term "capital" as used in this Chapter shall mean an amount equal to the amount calculated by application of the definition of such replacement term.
- (13) Capital impairment. – The reduction of a bank's capital at any time below its required capital.
- (14) Central reserve bank. – A depository institution of which at least fifty percent (50%) of its shares are owned by other depository institutions.
- (15) CFPB. – The Consumer Financial Protection Bureau or its successor.
- (16) Charter. – A document issued by the Commissioner in accordance with Article 3 of this Chapter permitting a bank to conduct banking business.
- (17) Combination. – A merger, share exchange, or transfer or acquisition of all or substantially all assets and liabilities of a person undertaken in compliance with such federal laws and laws of this State or other states as may be applicable.
- (18) Commission. – The State Banking Commission provided for in G.S. 53C-2-1.
- (19) Commissioner. – The Commissioner of Banks provided for in G.S. 53C-2-2.
- (20) Company. – A corporation, limited liability company, partnership, joint venture, business trust, trust, syndicate, association, unincorporated organization, or other form of business entity.
- (20a) Consumer finance licensee. – An individual associated with a "licensee," as that term is defined in G.S. 53-165(h).
- (21) Control. – The possession, directly or indirectly, of the power or right to direct or to cause the direction of the management or policies of a person by reason of an agreement, understanding, proxy, or power of attorney or through the ownership of or voting power over ten percent (10%) or more of any class of the voting securities of the person.

- (22) Control transaction. – The acquisition of control over a bank or a holding company other than pursuant to a combination.
- (23) Credit union. – A credit union as defined in G.S. 54-109.1.
- (24) De novo branch. – A branch of a bank or of an out-of-state bank within this State that is established as a branch, and not (i) by virtue of an acquisition of the existing branch of another bank or out-of-state bank, (ii) by a combination involving the bank or out-of-state bank, or (iii) by the conversion of a non-branch bank business office to a branch.
- (25) Deposit. – A "deposit" as defined in Section 3(l) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(l).
- (26) Deposit insurance. – Insurance of a bank's deposit accounts where the beneficiaries are the holders of the insured accounts.
- (27) Depository institution. – A bank, out-of-state bank, savings institution, or federally chartered institution, the deposits of which are insured by the FDIC.
- (28) Deputy commissioner. – An individual appointed by the Commissioner to such office as provided by G.S. 53C-2-3.
- (29) Distribution. – With respect to a bank, "distribution" has the same meaning as set forth in Chapter 55.
- (30) DPC subsidiary. – A debt previously contracted subsidiary of a bank that acquires in good faith an equity ownership interest through foreclosure or other realization on collateral, by way of a compromise of a disputed or contested claim, or to avoid a loss in connection with a debt previously contracted or to which the bank transfers an equity ownership interest so acquired by the bank.
- (31) Equity ownership interest. – Any beneficial equity or similar interest, whether direct or indirect, including shares, limited or general partnership interests, and membership interests in a limited liability company.
- (32) Examination. – A supervisory inspection of a bank, a proposed bank, a holding company, or a branch of an out-of-state bank operating in this State that may include inspection of all relevant information, including information of or about the subsidiaries and affiliates of the bank, proposed bank holding company, or branch. "Examination" also includes an investigation of any person with respect to any violation or suspected violation of any provision of this Chapter by such person, or a review of facts and circumstances relevant to the Commissioner's consideration of the issuance of an order pursuant to this Chapter.
- (33) Farm credit system institution. – A lending institution regulated by the Farm Credit Administration.
- (34) FDIC. – The Federal Deposit Insurance Corporation or its successor.
- (35) Federal Reserve Board. – The Board of Governors of the Federal Reserve System or its successor.
- (36) Federal savings association. – A federal savings association or federal savings bank chartered under Section 5 of the Home Owners' Loan Act, 12 U.S.C. § 1464.
- (37) Federally chartered institution. – A national bank or federal savings association.
- (38) Financial subsidiary. – A "financial subsidiary" as defined in 12 U.S.C. § 24a(g).

- (39) Holding company. – A company that controls a depository institution or that controls a company that directly or indirectly controls a depository institution.
- (40) Immediate family. – An individual's spouse, father, mother, children, brothers, sisters, and grandchildren; the father, mother, brothers and sisters of the individual's spouse; and the spouse of the individual's child, brother, or sister.
- (41) Inadequate capital. – An amount of capital equal to at least seventy-five percent (75%) but less than one hundred percent (100%) of required capital.
- (42) Individual. – A human being.
- (43) Insufficient capital. – An amount of capital less than seventy-five percent (75%) of required capital.
- (44) Lower-tier subsidiary. – Any company which is controlled by a subsidiary.
- (45) National bank. – A banking association organized under 12 U.S.C. § 21.
- (46) Non-branch bank business office. – Any staffed physical location open to the public, at which any of the following institutions offers one or more banking or banking-related products or services, but does not take deposits:
 - a. Bank.
 - b. Out-of-state bank.
 - c. Depository institution established under the laws of another state.
 - d. Federally chartered institution.
 - e. Separately organized subsidiary of a bank, out-of-state bank, depository institution established under the laws of another state, or federally chartered institution.
 - f. Holding company of a bank, out-of-state bank, depository institution established under the laws of another state, or federally chartered institution.

The provision of remote deposit capture facilities or services by a non-branch bank business office does not constitute a taking of deposits. Non-branch bank business offices include loan production offices, mortgage loan offices, and insurance agency offices, or a combination thereof.
- (47) North Carolina financial institution. – A bank, savings institution, or trust company organized under the laws of this State. For purposes of the Securities Act of 1933 and the Securities Exchange Act of 1934, any North Carolina financial institution is a banking institution.
- (48) OCC. – The Office of the Comptroller of the Currency or its successor.
- (49) OCOB. – The Office of the Commissioner of Banks as provided in G.S. 53C-2-3.
- (50) Organizational documents. – The charter, certificate of organization, articles of incorporation, articles of association, certificate of limited partnership, bylaws, operating agreement, partnership agreement, and any other similar documents required to be prepared or adopted by a company in connection with its organization, and as thereafter amended from time to time.
- (51) Organizational law. – The laws of the jurisdiction of organization of a company applicable to the organization of the company and its governance, including approval of transactions by its board of directors, shareholders, partners, members, or beneficiaries, as applicable.

- (52) Organizers. – One or more individuals who are the organizers of a proposed bank responsible for the business of the proposed bank from the filing of the application to the Commission's final decision on the application.
- (53) Out-of-state bank. – A bank that is organized, chartered, or created under the laws of a state other than this State and the deposits of which are insured by the FDIC.
- (54) Person. – An individual, a company, or a group of persons who are acting in concert.
- (55) Plan of conversion. – A detailed outline of the procedure of the conversion of a depository institution from one to another charter.
- (56) Practical banker. – An individual who at the time of appointment to the Commission is, or has been during the five years preceding the appointment, a president, chief executive officer, director, or holder of five percent (5%) or more of any class of voting securities of a North Carolina financial institution.
- (57) Principal office. – The office that houses the headquarters of a bank.
- (58) Public member. – A member of the Commission who is not a practical banker or a consumer finance licensee and who is not at the time of appointment to the Commission, nor was within the five years preceding the appointment, an employee of a North Carolina financial institution.
- (59) Public notice. – Notice to the public of the applicable information specified in this Chapter by (i) a single publication in a newspaper of general circulation in the county in which the bank that is the subject of the publication has its principal office or in such other county as may be directed by the Commissioner to best meet the purposes for which the notice is required and (ii) a posting in the notices section of the Commissioner's Web site for at least 15 days.
- (60) Record. – Information, reports, memoranda, charts, letters, messages, extracts, summaries, analyses, compilations, transaction documentation, account statements, financial statements, and other documents, including customer financial and other information, whether created, transmitted, distributed, retained, or stored in tangible or digital form.
- (61) Registered agent. – The person named in the organizational documents of a company upon whom service of legal process is deemed binding upon the company.
- (62) Required capital. – Required capital means either of the following:
 - a. In the case of a proposed bank, the amount of capital required by the Commissioner as a prerequisite to the commencement of the business of banking.
 - b. In all other cases, an amount of capital equal to at least the amount of capital required for a bank to be deemed "adequately capitalized" under applicable federal regulatory capital standards.
- (63) Savings institution. – A savings and loan association or a savings bank organized under the laws of this State or of another state, or a federal savings association or savings bank.
- (64) Shareholder. – Any person in whose name shares are registered in the records of a corporation, or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

- (65) Shares. – The units into which the equity ownership interests of a corporation are divided.
- (66) State. – Any state of the United States, the District of Columbia, or any territory of the United States other than this State.
- (67) State trust company. – A company organized under the provisions of Article 24 of Chapter 53 of the General Statutes and a trust company previously organized under other provisions of this Chapter to operate only as a trust company and not as a commercial bank.
- (68) Subsidiary. – A company over which a bank has control, including a lower-tier subsidiary.
- (69) This State. – The State of North Carolina.
- (70) Trust business. – Acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331.
- (71) Trust company. – A trust institution that is neither a depository institution nor a foreign bank, as defined in 12 U.S.C. § 1813(s)(1), but not including a bank organized under the laws of a territory of the United States.
- (72) Trust funds. – Trust funds as defined in Section 3(p) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(p).
- (73) Trust institution. – Any company lawfully acting as a fiduciary in a state or in a foreign country.
- (74) Voting securities. – A security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the company or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote.
- (75) Well-capitalized. – The term "well-capitalized" has the same meaning as defined in Regulation Y of the Federal Reserve Board, 12 C.F.R. § 225.2(r).
- (76) Well-managed. – Except as otherwise provided in this Chapter, a company or depository institution is well-managed if the following apply:
 - a. At its most recent examination, the company or institution received at least a satisfactory composite rating and at least a satisfactory rating for management, if such rating is given.
 - b. In the case of a company or depository institution that has not received an inspection or examination rating, a company or depository institution is well-managed if the Commissioner has determined, after a review of the managerial and other resources of the company or depository institution and after consulting with any other appropriate bank supervisory agency for the company or institution, that the company or institution is well-managed.

A depository institution that results from the merger of two or more depository institutions that are well-managed shall be considered to be well-managed unless the Commissioner determines otherwise after consulting with any other appropriate bank supervisory agency for each depository institution involved in the merger. A depository institution that results from the merger of a depository institution that is well-managed with one or more depository institutions that are not well-managed or have not been examined shall be considered to be well-managed if the Commissioner determines, after a review of the managerial

and other resources of the resulting depository institution and after consulting with any other appropriate bank supervisory agency for the institutions involved in the merger, as applicable, that the resulting institution is well-managed. (2012-56, s. 4; 2013-29, s. 1; 2017-165, ss. 1, 2.)

§ 53C-1-5. Severability.

If any provision of this Chapter is found by any court of competent jurisdiction to be invalid as to any person or circumstance, or to be preempted by federal law, the remaining provisions of this Chapter shall not be affected and shall continue to apply to any other person or circumstance. (2012-56, s. 4.)