

Regulatory Impact Statement for new Part 14 of the Superintendent's Regulations, 3 NYCRR

1. Statutory authority: Banking Law (or "BL") §§ 10, 14, 96(1), 97(4-a), 97(5), and 201-a; Financial Services Law (or "FSL") §§ 202 and 302.

BL § 10 sets forth a declaration of policy, including that banking institutions will be regulated by the Department of Financial Services (the "Department") in a manner to insure safe and sound conduct and maintain public confidence.

BL § 14 references, without limitation, the policy of BL § 10 and sets forth certain powers of the Superintendent of Financial Services ("Superintendent") under the BL, including the power to "make, alter and amend orders, rules and regulations not inconsistent with law" and, under certain enumerated circumstances, to "make variations from the requirements" of the BL, provided such variations are "in harmony with the spirit of the law."

BL § 96(1) enumerates the powers that a bank or trust company possesses to engage in the business of banking.

BL § 97(4-a) provides that banks and trust companies have the power to invest in subsidiary corporations and limited liability companies, limited partnerships, business trusts, or similar legal persons ("subsidiaries") that they control for the purposes enumerated in the statute. Most notably, BL § 97(4-a)(f) allows such subsidiaries to engage in an activity in which a bank is authorized to engage directly. The authority granted to banks and trust companies is subject to any restrictions the Superintendent may provide.

BL § 97(5) permits banks and trust companies to purchase other equity interests in corporations, limited liability companies, limited partnerships, business trusts, or similar legal persons, as permitted by the laws of New York and regulations promulgated by the Superintendent.

BL § 201-a provides that foreign banking corporations licensed to operate branches and agencies in New York may exercise the powers set forth in BL § 200 and BL § 201.

FSL § 202 establishes the office of the Superintendent and provides the Superintendent with broad rights, powers, duties, and discretion with respect to matters under the Financial Services Law, the Banking Law, and the Insurance Law.

FSL § 302 sets forth the power of the Superintendent to prescribe, withdraw or amend rules and regulations involving financial products and services, including effectuating and interpreting the provisions of the Financial Services Law, the Banking Law, and the Insurance Law, and in governing the procedures to be followed in the practice of the Department.

2. Legislative Objectives: BL § 97(4-a) authorizes banks and trust companies, subject to restrictions imposed by the Superintendent, to own or make investments in the stock and other equity of subsidiaries that they control and that are engaged in the transaction of any business in which a bank or trust company may engage directly (defined as “operating subsidiaries” in the proposed regulation) and to invest in corporations organized pursuant to § 25(a) of the Federal Reserve Act (“Edge Act subsidiaries”). Banks and trust companies may also make investments in capital stock or other equity interests of other entities if specifically authorized by the Superintendent pursuant to BL § 97(5). Part 14 implements the Superintendent’s authority to authorize investments in operating subsidiaries and Edge Act subsidiaries pursuant to BL § 97(4-a) and establishes the procedures banks and trust companies must follow to make applications to invest in the capital stock or other equity interests of other entities pursuant to BL § 97(5).

3. Needs and benefits: The filing requirements imposed on regulated entities should be commensurate to the risks posed by the transactions in which each entity is engaged. New York banks and trust companies should not be burdened with application or notice requirements that are unnecessary. Part 14, however, is outdated, requiring substantial filings for most investments made by a bank or trust company, regardless of the risk posed by the investment or the condition of the bank making the investment. Part 14 has lagged behind Federal regulatory requirements, which have evolved over time to require a more simplified notice and/or approval

process. To begin to address these outdated requirements, the Department issued a Wild Card order under BL § 12-a (the “Wild Card Order”) on May 25, 2025, permitting regulated entities to make simplified filings under Part 14 in a manner equivalent to the filings permitted for national banks under 12 C.F.R. § 5.34. The Wild Card Order is available at: https://www.dfs.ny.gov/industry_guidance/wild_card_activities.

The proposal adopts a new Part 14 to minimize regulatory burdens, establish clear expectations, and maintain competitiveness of state-chartered and licensed entities. Substantive provisions of the Wild Card Order are being incorporated into this proposal and, upon its adoption, the Wild Card Order will be rescinded. These changes will also reduce the number of hours the Department’s personnel use to evaluate filings required under the former Part 14, which should improve the service these companies and the public generally receive from the Department.

The following is a summary of the most notable changes to the regulation:

- a. The following entities are proposed to be excluded from the definition of operating subsidiary for purposes of Part 14 and will not be subject to filings with the Department under Section 14.2 or 14.3. This approach aligns with the Banking Law § 97.4-a, current Part 14, and treatment of national banks’ operating subsidiaries.
 - i. A subsidiary in which the bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted;
 - ii. A trust formed for purposes of securitizing assets held by the bank as part of its banking business and any affiliated entity formed to issue related debt securities or hold the bank’s residual interest in the securitization trust;

- iii. A subsidiary formed to hold investments in community development entities or projects that have been approved by the Superintendent (or, if applicable, were self-certified by the bank) pursuant to Section 6.5 of Part 6 of the General Regulations of the Superintendent; and
- iv. A subsidiary formed to own or operate real or personal property for use as bank premises.

For purposes of the proposed Part 14, the term “bank” is defined as a New York state-chartered bank, New York state-chartered trust company, or New York licensed branch or agency of a foreign bank.

b. Additional investments in previously approved operating subsidiaries or operating subsidiaries previously reported in a filing under Part 14, if the book value does not exceed 1% of the bank’s capital and surplus, would not require a new notice to the Department. (Section 14.2(c)(1)). A similar approach is taken with respect to additional investments in certain entities other than operating subsidiaries. (Section 14.3(b)).

c. No prior or after-the-fact notice would be required for a well-managed and well-capitalized bank setting up an operating subsidiary that would engage only in activities that the bank has previously reported to the Department in a prior operating subsidiary. (Section 14.2(c)(2)).

d. Only after-the-fact notice would be required for a well-managed and well-capitalized bank setting up an operating subsidiary that would only engage in activities substantively the same as “previously approved activities.” In proposed Part 14, “previously approved activities” are listed in Section 14.2(b)(2) and for future changes in approved activities, proposed Part 14 would allow the Superintendent to expand “previously approved activities” by updating a list of activities on the Department’s website and notifying regulated entities about the update. (Section 14.1(b)(4)). The Department will not reduce the list of approved activities without proposing a formal amendment to Part 14.

To qualify for after-the-fact notice filings, well managed and well capitalized banks would no longer be required to be free of current enforcement orders; instead, such banks would be required to receive a management rating of 1 or 2 (or risk management rating of 1 or 2 in the case of branches and agencies of foreign banks) as

well as a composite rating of 1 or 2 to take advantage of after-the-fact notices. Current Part 14 only looks to the composite rating. In proposing this change, the Department found that a serious enforcement problem would already be reflected in the management and composite ratings, whereas the existence of old enforcement orders may not reflect the current state of the institution. In the Department's view, the proposed approach strikes the desired supervisory balance.

e. The proposed regulation creates a new Section 14.4 specifically to address tax equity financing ("TEF"). TEF is defined as a transaction in which a bank provides equity financing to fund a project that generates tax credits or other tax benefits, and the use of an equity-based structure allows the transfer of those credits and other tax benefits to the bank. TEFs take the form of equity investments for tax purposes but are substantively loans to the facilities.

The Department has not previously adopted regulations specifically addressing TEF. To minimize regulatory burdens, establish clear expectations, and to maintain competitiveness of state-chartered and licensed entities, the Department's practice has been to follow the parameters adopted by the Office of the Comptroller of the Currency (the "OCC") in its TEF regulation, 12 C.F.R. § 7.1025, when considering TEF applications. In substance, the proposed Section 14.4 codifies the Department's existing practices for new TEF investments and reduces or eliminates filing burdens for subsequent TEF investments of a similar kind.

4. Costs: The proposed changes to Part 14 should reduce costs for regulated entities without impairing the Department's supervisory oversight of these institutions. Costs are not expected to increase for the State, Department, or any local government.

5. Local government mandates: This regulation will impose no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: No new forms will be required by the proposed regulation. The new version of Part 14 should reduce the paperwork burden for both regulated entities and the Department.

7. Duplication: The proposed amendments do not duplicate, overlap, or conflict with any other regulations. The new version of Part 14 replaces a prior version of Part 14 and will make the Wild Card Order moot.

8. Alternatives: The Department could choose not to amend the current regulation. It could choose to issue additional wild card orders to reduce regulatory burdens on a sporadic, piecemeal basis. Guidance letters and industry letters could marginally simplify procedures under the existing Part 14. The Department believes a new regulation is far more efficient and beneficial to regulated entities.

9. Federal Standards: The OCC has promulgated regulations at 12 C.F.R. § 5.34 under the National Bank Act § 24 that set forth authorized activities and application or notice procedures for national banks, and Federal branches or agencies of foreign banks, engaging in activities through an operating subsidiary. In furtherance of § 24, the OCC regulations provide that a national bank may conduct activities in an operating subsidiary that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC. The OCC has discretion to authorize activities beyond those specifically enumerated in § 24.

Under the Federal Deposit Insurance Act § 24, an insured state bank may not engage as principal in any type of activity that is not permissible for a national bank. The Federal Deposit Insurance Corporation promulgated regulations at 12 C.F.R. § 362 that similarly provide that a subsidiary of an insured state bank may not engage as principal in any activity that is not of a type permissible for a subsidiary of a national bank, and may not directly or indirectly acquire or retain as principal any equity investment of a type that is not permissible for a national bank unless one of the exceptions applies.

BL §§ 97(4-a) and 97(5) are consistent with the Federal law. Part 14 also is promulgated to be consistent with the Federal law.

10. Compliance Schedule: The new Part 14 will be effective immediately upon publication of the Notice of Adoption in the State Register.

Consolidated Statement Setting Forth the Basis for the Finding that the Proposed 3 NYCRR Part 14 Will Not Impose Any Adverse Impact on Small Businesses and Local Governments.

Part 14 was last substantively amended in the 1990s. It currently imposes application requirements that are often outdated and require substantial filings regardless of the risk posed by a potential investment. This proposal makes extensive changes to the existing Part 14 to limit filing requirements, among other things, for certain investments, including those that banks and trust companies enter into in the ordinary course of business or investments in entities engaged in activities that have been previously approved by the Superintendent. The proposal also limits filing requirements for banks and trust companies that are well-managed and well-capitalized. Overall, the proposal streamlines and rationalizes the filings required by Part 14 to limit filings for investments that pose less risk to the ability of a bank or trust company to operate in a safe and sound manner while maintaining application and notice requirements for other investments. This proposal updates Part 14 to keep pace with federal regulatory requirements, which have evolved over time to require a more simplified notice or application process for investments that pose less risk to the ability of a bank or trust company to operate in a safe and sound manner.

All banks and trust companies that are small businesses will have to comply with the notice and application requirements imposed by the new Part 14. The Department notes, however, that the proposed Part 14 substantially reduces regulatory burdens on banks and trust companies. To the extent that a bank or trust company is a small business and is making an investment that is subject to the reduced notice or application requirements imposed by the proposed Part 14, the proposal would reduce the compliance requirement imposed on such bank or trust company as compared to what is required by the current Part 14. To the extent that a bank or trust company is a small business and is not making an investment that is subject to the reduced notice or application

requirements imposed by the proposed Part 14, the proposed Part 14 imposes no new or additional reporting requirement over what is required by the current Part 14. Accordingly, the overall impact of replacing current Part 14 with the proposed Part 14 would be to reduce the compliance and filing requirements imposed on small businesses that are subject to Part 14.

No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the regulation.

Consolidated Statement Setting Forth the Basis for the Finding that the Proposed New 3 NYCRR Part 14 Will Not Impose Any Adverse Impact on Rural Areas.

The proposed Part 14 substantially reduces regulatory burdens on banks and trust companies. To the extent that a bank or trust company operating in a rural area makes an investment that is subject to the reduced notice or application requirements imposed by the proposed Part 14, the proposal would reduce the compliance requirement imposed on such bank or trust company as compared to what is required by the current Part 14. To the extent that a bank or trust company operating in a rural area makes an investment that is subject to the reduced notice or application requirements imposed by the proposed Part 14, the proposed Part 14 imposes no new or additional reporting requirement over what is required by the current Part 14. Accordingly, the overall impact of replacing current Part 14 with the proposed Part 14 would be to reduce the compliance and filing requirements imposed on banks and trust companies operating in rural area markets.

Statement Setting Forth the Basis for the Finding that Proposed New 3 NYCRR Part 14 Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities

The repeal of the existing Part 14 and the adoption of the proposed Part 14 should not adversely impact jobs or employment opportunities in New York State. The purpose of the proposal is to replace an existing regulation with a less burdensome investment application and notification requirement than the one imposed by the existing regulation. The new Part 14 is intended to modernize and rationalize existing notification and approval processes for regulatory filings under Part 14 of the Superintendent's Regulations and to promote competitiveness of the New York banking charter while maintaining reporting requirements for more complex or novel investments. The new regulation is expected to reduce the number of hours spent by regulated entities in connection with regulatory filings.