

Permanent Amendment for Publication in the NCAC

04 NCAC 16A .0105 is amended with changes as published in 31:23 2276 as follows:

04 NCAC 16A .0105 RESTRICTIONS: PAYMENT OF DIVIDENDS AND REPURCHASE OF STOCK

(a) A stock savings institution shall not declare or pay a cash dividend ~~on, on~~ or repurchase any ~~of, of~~ its capital stock if the effect ~~thereof~~ would be to reduce the net worth of the savings institution to an amount ~~which that~~ is less than the minimum required by the federal regulatory authority pursuant to 12 U.S.C. 1831o(d) ~~or, for savings banks, or an amount less than the minimum required by G.S. 54C-163. G.S. 54C-163, whichever is greater. 12 U.S.C. 1831o(d) is hereby incorporated by reference, including subsequent amendments or editions, and may be found free of charge as follows:~~ <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title12/html/USCODE-2010-title12-chap16-sec1831o.htm>.

(b) Without the prior written approval of the Commissioner of Banks, a stock savings institution ~~which that~~ has been in operation or converted from mutual form for less than five years shall not repurchase any of its capital stock. Such approval shall be granted only upon a showing that the proposed repurchase will not adversely affect the safety and soundness of the savings institution.

(c) A stock savings institution ~~which that~~ has been in operation or converted from mutual form for less than five years shall obtain the written approval of the Commissioner of Banks before declaring or paying a cash dividend on its capital stock in an amount in excess of one-half of the greater of:

- (1) the savings institution's net income for the most recent fiscal year end; or
- (2) the average of the savings institution's net income after dividends for the most recent fiscal year end and not more than two of the immediately preceding fiscal year ~~ends, if applicable. ends.~~

(d) For a period of three years following the date of completion of a conversion from mutual to stock form, no person shall, directly or indirectly, offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of a converted savings institution without the prior written approval of the Commissioner of Banks. Such approval shall be granted only as follows:

- (1) ~~During upon a finding by the Commissioner of Banks that during~~ the first year following the date of completion of the conversion to protect the safety and soundness of the institution; or
- (2) ~~During during~~ the second and third years following the date of completion of the conversion upon a finding by the Commissioner of Banks that:

(A) such acquisition:

- (i) is necessary to protect the safety and soundness of the institution, institution; or
 - (ii) is supported by the board of directors of the converted savings institution, institution;
- and

(B) the person acquiring in excess of 10 percent of any class of an equity security of the converted institution is of good character and integrity, possesses satisfactory managerial skills, ~~and~~ after the acquisition such person will be a source of financial strength to the converted savings institution institution, and the interests of the public will not be adversely affected thereby, affected.

1 (e) Securities ~~beneficially owned~~ owned in violation of Paragraph (d) of this Rule in excess of 10 percent of any class of
2 securities shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares
3 in connection with any matters submitted to the stockholders for a vote.

4 (f) Paragraphs (d) and (e) shall not apply to:

- 5 (1) any offer with a view toward public resale made ~~exclusively~~ to the savings ~~institution or institution, its~~
6 ~~underwriters~~ the institutions underwriters, or the selling group acting on ~~its~~ the institution's behalf; or
7 (2) any offer to acquire or acquisition of beneficial ownership of more than 10 percent of the common
8 stock of a savings institution by a corporation whose ownership is or will be substantially the same as
9 the ownership of the savings institution, provided that the offer or acquisition is made more than one
10 year following the date of completion of the conversion.

11
12 *History Note: Authority G.S. 54B-43; 54B-55; 54C-44; 54C-53;*

13 *Eff. August 31, 1981;*

14 *Amended Eff. July 1, 1990; November 1, 1985;*

15 *Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;*

16 *Amended Eff. November 1, 2017; December 1, 2011; April 15, 1993; February 15, 1992.*

Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16A .0401 - .0409 are repealed with changes as published in 31:23 NCR 2277 as follows:

2

3 **04 NCAC 16A .0401 RIGHT TO HEARING**

4 **04 NCAC 16A .0402 INFORMAL SETTLEMENT**

5 **04 NCAC 16A .0403 REQUEST FOR HEARING**

6 **04 NCAC 16A .0404 NOTICE OF HEARING**

7 **04 NCAC 16A .0405 INTERVENTION IN AN ADMINISTRATIVE HEARING**

8 **04 NCAC 16A .0406 DEPOSITIONS**

9 **04 NCAC 16A .0407 SUBPOENAS**

10 **04 NCAC 16A .0408 SERVICE OF SUBPOENAS**

11 **04 NCAC 16A .0409 OBJECTION TO A SUBPOENA**

12

13 *History Note:* Authority G.S. 53-93; ~~54B-2; 54B-52; 54B-55; 54C-2; 54C-3; 54C-52; 54C-53;~~ 53-

14 104; 54B-55; 150B-38; 150B-39;

15 *Eff. July 1, 1990;*

16 *Amended Eff. December 1, 2011.*

17 *Repealed Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16C .0304 is amended with changes as published in 31:23 2277 as follows:

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3 **04 NCAC 16C .0304 TEMPORARY CLOSING OF OFFICE**

4 ~~The Commissioner of Banks shall be notified if an office is closed temporarily for any reason other than observance of a~~
5 ~~holiday. If a bank's office is closed temporarily, other than closures in observance of a holiday, the bank shall notify the~~
6 ~~Commissioner of Banks no later than 72 hours after such closure if the closure may interfere with the bank's operations or~~
7 ~~poses an existing or imminent threat to the safety or security of persons on property, or both, other than closures in~~
8 ~~observance of a holiday. property.~~

9

10 *History Note:* Authority G.S. 54B-55; [53B-110; 53B-175;]

11 *Eff. July 1, 1990;*

12 *Amended Eff. November 1, 2017; December 1, 2011.*

Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16D .0401 - .0403 are repealed with changes as published in 31:23 NCR 2278 as follows:

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3 **04 NCAC 16D .0401** **SERVICING LOANS**

4 **04 NCAC 16D .0402** **APPRAISALS**

5 **04 NCAC 16D .0403** **RECORDS WITH RESPECT TO LOAN**

6

7 *History Note:* *Authority G.S. 54B-55; 54B-161;*

8 *Eff. August 31, 1981.*

9 *Amended Eff. February 15, 1992; July 1, 1990; November 1, ~~1981.~~ 1985.*

10 *Repealed Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

04 NCAC 16E .0103 is amended with changes as published in 31:23 2278 as follows:

SUBCHAPTER 16E - OPERATION OF SAVINGS BANKS INSTITUTIONS

SECTION .0100 - DIRECTORS, BYLAWS AND CHARTER

04 NCAC 16E .0103 ~~COMPOSITION OF BOARD OF DIRECTORS~~

~~(a) Requirements for the composition of a board of directors are as follows:~~

~~(1) Except in the case of a savings bank having 80 percent or more of any class of voting shares owned by a holding company or controlling person, no more than one third of the Board of Directors shall be salaried officers or employees of the savings bank, or of any subsidiary or any holding company or affiliate thereof or any controlling person affiliate thereof.~~

~~(2) In the case of a savings bank having 80 percent or more of any class of voting shares owned by a holding company or controlling person, no more than 49 percent of the Board of Directors shall be salaried officers or employees of the savings bank, or of any subsidiary or any holding company or affiliate thereof or any controlling person affiliate thereof.~~

~~(3) No more than two directors shall be members of the same immediate family.~~

~~(4) No two directors who are attorneys may be members of the same law firm.~~

~~(5) The managing officer of the savings bank shall be a member of the Board of Directors.~~

~~(b) (a) A director shall not vote on any matter in which he has they have a personal or financial interest.~~

~~(c) (b) When a savings bank institution takes action ~~resulting in the establishment of~~ establishing a new chief executive officer or director, the savings bank institution shall notify the ~~Administrator~~ Commissioner of Banks ~~in advance in writing~~ within 14 calendar days of such change, and shall provide the name of the new chief executive officer or director, the effective date of the appointment, and a statement of the person's past and current business and professional affiliations. The name of any departing chief executive officer or director shall also be provided to the ~~Administrator~~ Commissioner of Banks in writing.~~

~~(d) (c) Significant ownership interest for the purposes of G.S. 54C-101(e) shall depend upon the ownership circumstances of each savings bank as determined by the Administrator who shall apply the requirement considering the relevant community to assure this requirement is not applied in a manner which would render it unattainable or unreasonably burdensome. In determining whether a director of a savings institution has a significant ownership interest for the purposes of G.S. 54C-101(e), the Commissioner of Banks shall consider the institutions market area to assure this requirement is not applied in a manner that would render it unattainable or unreasonably burdensome. Notwithstanding the above, [any] Any of the following shall be deemed to be significant ownership interests: interests for G.S. 54C-101(c):~~

(1) For stock savings banks under fifty million dollars (\$50,000,000) in assets, stock ownership in the institution or its holding company of two thousand five hundred dollars (\$2,500.00) in market value at time of purchase; ~~or~~

- 1 (2) For mutual savings banks under fifty million dollars (\$50,000,000) in assets, a two thousand five
2 hundred dollar (\$2,500) deposit relationship; ~~or~~
- 3 (3) For stock savings banks over fifty million dollars (\$50,000,000) in assets, stock ownership in the
4 institution or its holding company of five thousand dollars (\$5,000) in market value at time of
5 purchase; or
- 6 (4) For mutual savings banks over fifty million dollars (\$50,000,000) in assets, a five thousand dollar
7 (\$5,000.00) deposit relationship.

8 For savings ~~bank~~ institutions that cross the fifty million dollar (\$50,000,000) threshold, the ~~Administrator will~~
9 Commissioner of Banks shall allow ~~a reasonable period~~ up to one year for the Directors to comply with the ownership
10 interest requirement.

11

12 *History Note: Filed as a Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on March 31,*
13 *1992;*
14 *Authority G.S. 54B-55; 54C-53; 54C-101;*
15 *Eff. February 15, ~~1992~~. 1992;*
16 *Amended Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16E .0104 is amended with changes as published in 31:23 2279 as follows:

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3 **04 NCAC 16E .0104 BYLAWS**

4 The Commissioner of Banks shall be deemed to have approved any **bylaws or** amendments **to bylaws** ~~to which he~~ that the
5 Commissioner has not objected within 25 days after the date ~~on which such bylaws or amendments are filed.~~ that the
6 bylaws are filed with the Commissioner of Banks.

7

8 *History Note: Authority G.S. 54B-9; 54B-52; 54C-9; 54C-52; 54C-53; 54C-102;*

9 *Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;*

10 *Eff. February 15, 1992;*

11 *Amended Eff. November 1, 2017; December 1, 2011.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16E .0301 is amended with changes as published in 31:23 2279 as follows:

3 **04 NCAC 16E .0301 GENERAL POLICIES**

4 (a) Records to be Kept at Principal Office. ~~Every~~ Each savings bank ~~institution, each affiliate, and the institution's~~
5 parent company shall keep and make available for examination by the representatives of the Commissioner of Banks at
6 the principal office ~~correct and complete~~ office, books of account and minutes of the proceedings of members,
7 ~~shareholders, directors and committees,~~ and records of all the transactions of the institution in its true financial condition.

8 Records shall be kept to permit and facilitate a speedy ~~[examination,]~~ examination by the representatives of the
9 Commissioner of Banks. ~~Complete records of all business transacted at the principal office shall be maintained at the~~
10 ~~principal office. Everything relating to the business of a savings bank shall be examined and investigated by the~~
11 ~~Commissioner of Banks on a regular and periodic basis determined by the size and complexity and current expected~~
12 ~~condition and recent performance of the institution, the availability of examiners, coordination of state and federal~~
13 ~~schedules, the convenience of the institution, and any other requirements or constraints. Every savings bank and service~~
14 ~~corporation thereof shall be audited at least once in each calendar year by independent auditors. The audit shall be done~~
15 ~~on the basis of generally accepted accounting principles, unless otherwise provided by this Chapter. The savings bank~~
16 ~~shall file with the Commissioner of Banks one copy of the audit report along with one copy of the auditor's management~~
17 ~~letter and any other letters regarding the audit within 90 days after the end of its fiscal year, unless extended in writing by~~
18 ~~the Commissioner of Banks. Such extension by the Commissioner of Banks shall be granted upon a showing by the~~
19 ~~savings bank that the failure to file within 90 days of the close of its fiscal year was due to circumstances beyond its~~
20 ~~control or that compliance with the time period would have resulted in a substantial increase in audit costs. The savings~~
21 ~~bank shall also submit to the Commissioner of Banks a copy of the savings bank's written response to the auditor's~~
22 ~~management letter at the time such response is provided to the appropriate federal regulatory authority.~~

23 (b) ~~Records to be Prepared at Branch Office. Each branch office shall prepare records of all business transacted at such~~
24 ~~branch office, and shall furnish full control records to the principal office.~~

25 (c) ~~Closing Date for Books. Every savings bank shall close its books at the close of business on December 31 of each~~
26 ~~year, or shall obtain the approval of the Commissioner of Banks to designate any other closing date. When determining~~
27 ~~whether to designate a different closing date, the Commissioner shall consider what is in the best interest of depositors,~~
28 ~~borrowers, other customers, the institution's owners, employees, creditors, and the community in general.~~

29 (d) ~~Bonds and Other Obligations to be Carried at Actual Costs. The bonds or other investments of a savings bank shall~~
30 ~~not be carried on its books at more than the actual costs thereof.~~

31 (e) ~~Real Estate to be Carried at Amount Invested in Same. A savings bank shall not carry any real estate on its books at~~
32 ~~a sum in excess of the total amount invested by such savings bank on account of such real estate, including advances,~~
33 ~~costs, and improvements, but excluding accrued, uncollected interest.~~

34 (f) ~~Appraisal of Real Estate Owned. Every savings bank shall appraise each parcel of real estate at the time of~~
35 ~~acquisition thereof. The report of each such appraisal shall be submitted in writing to the Board of Directors and shall be~~
36 ~~kept in the records of the savings bank.~~

1 ~~(g)~~ (b) Maintenance of Membership and Stockholder Records. Every ~~mutual~~ savings bank institution shall maintain
2 membership records, ~~that shall show the name and address of the member, the status of member, status of the member as~~
3 ~~a deposit account holder, or an obligor, or a deposit account holder and obligor, and the date of the membership thereof.~~
4 or stockholder records. When a savings institution has reason to believe 10 percent or more of the outstanding capital
5 stock of the savings institution is controlled by one ~~owner~~ owner, the institution shall notify the Commissioner in
6 ~~writing,~~ writing and shall include the residential address and the number of shares held by the shareholder.

7 (h) ~~Maintenance of Stockholder Records. Every stock savings bank shall keep at its principal office or at the office of its~~
8 ~~transfer agent or register, a record of its stockholders that contains the names and addresses of all stockholders, and the~~
9 ~~number, class and series of shares held by each. Whenever called upon by the Commissioner of Banks, a stock savings~~
10 ~~bank shall file in the office of the Commissioner of Banks a correct list of all its stockholders, the resident address of~~
11 ~~each, the number of shares of stock held by each, and the dates of issue. When a savings bank has reason to believe ten~~
12 ~~percent or more of the outstanding capital stock of the savings bank is controlled by one owner, a savings bank shall~~
13 ~~notify the Commissioner of Banks in writing, and shall include the resident address and number of shares held by the~~
14 ~~shareholder.~~

15 (c) Savings institutions shall keep the following books and records at the institution, or at its parent holding company,
16 unless another storage site is approved by the Commissioner of Banks in writing:

17 (1) Alphabetical direct and indirect liability ledgers. Each institution shall keep an alphabetical direct and
18 indirect liability ledger. The alphabetical direct liability ledger shall show each customer's direct
19 obligations owed to the institution by loan name or account number and the balance outstanding under
20 each account. The alphabetical indirect liability ledger shall show each customer's indirect obligations
21 owed to the institution by loan name or account number and the balance outstanding under each
22 account. The alphabetical direct liability ledger shall be kept in balance with the general ledger
23 control. The alphabetical indirect liability ledger shall be updated at least monthly. Where the
24 aggregate total of a customer's direct and indirect obligations to the institution do not exceed twenty
25 thousand dollars (\$20,000), the indirect obligations of that customer may be omitted from the
26 alphabetical indirect liability ledger. In an institution whose automated record system is not able to
27 produce an alphabetical liability ledger, the institution shall produce an alphabetical listing of
28 customers showing all of a customer's loan or account numbers and the amount outstanding under each
29 account number when called upon by representatives of the Commissioner of Banks. Each institution
30 shall produce both the direct and indirect liability ledgers in hard copy form upon request by
31 representatives of the Commissioner of Banks.

32 (2) Monthly reconciliation of accounts with correspondent banks. A record shall be kept, showing the
33 monthly reconciliation of each account with correspondent banks. A signed review of such
34 reconciliations shall be made by an officer or employee of the institution other than the person
35 responsible for preparing the reconciliation.

36 (3) Purchases and sales of securities. A record shall be kept of purchases and sales of securities. The
37 record shall include the following:

- 1 (A) dates of purchases and sales;
- 2 (B) interest rates;
- 3 (C) maturities;
- 4 (D) par value;
- 5 (E) cost value;
- 6 (F) all write-ups or write-downs;
- 7 (G) a full description of the security;
- 8 (H) from whom purchased;
- 9 (I) to whom sold;
- 10 (J) purchase price;
- 11 (K) selling price; and
- 12 (L) when, where, and why pledged or deposited.

13 This record shall be maintained in balance with the general ledger control.

14 (4) Charge-offs. A record shall be kept of all items charged-off and of all recoveries. All charge-offs shall
15 be authorized or approved by the executive committee or by the board of directors, and **[such] the**
16 action shall be recorded in their minutes. The charge-off record shall show the date of the charge-off, a
17 description of the asset, and the amount of the charge-off. The record shall be supported by the actual
18 charged-off items or the final disposition of any charged-off item. The record of recoveries shall show
19 the date and amount of each recovery.

20 (5) Records of real estate. A record shall be kept of all parcels owned, including the banking house. The
21 record shall show when the property was acquired, how the property was acquired, the cost of the
22 property, the book value of the property, and detailed income and expense reports relating to the
23 property. This record shall be supported by appraisals, title certificates showing assessed value, tax
24 receipts, and hazard insurance policies relating to the property. Every savings institution shall appraise
25 the value of each parcel of real estate taken in satisfaction of debts previously contracted at the time of
26 acquisition. The report of each appraisal shall be submitted in writing to the Board of Directors and
27 shall be kept in the records of the savings institution.

28 (6) Meeting minutes. Minutes of all board of directors' meetings, board committee meetings, and
29 members and stockholders meetings shall be kept showing any action resulting from the meeting. All
30 minutes shall be signed by the chairman and the secretary of such meeting.

31 (7) Cash items held over. A daily record shall be kept of all cash items held over from the day's business,
32 including all checks that would cause an overdraft if handled according to the institution's check-
33 posting policy. This record shall be kept in balance with the general ledger control and shall identify
34 the account on which the item is drawn or is obligated for payment, the reason the item is being held,
35 the date the item was placed in the cash items account, and the amount of the item.

1 (8) Record of income and expenses. A detailed record of income and expenses shall be kept and balanced
2 monthly. A report of this record shall be made to the executive committee or board of directors, and
3 the receipt of same shall be noted in the meeting minutes.

4 (d) Unless an institution requests approval of another storage site in writing, [is approved by] and receives approval from
5 the Commissioner of [Banks in writing,] Banks, the books and records of the institution's parent holding company shall
6 be kept at the institution or at the institution's parent holding company; and the books and records of an affiliate of the
7 institution shall be kept at the affiliate, the institution, or the institution's parent holding company.

8 (f) Based upon the [financial condition] safety and soundness of a savings institution as determined by examination or
9 [otherwise,] or other information, the Commissioner of Banks may require a savings institution to prepare or maintain
10 different or additional books, records, and reports.

11
12 *History Note: Authority G.S. 54B-2; 54B-9; 54B-52; 54B-55; 54C-2; 54C-22; 54C-52; 54C-53;*
13 *Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;*
14 *Eff. February 15, 1992;*
15 *Amended Eff. November 1, 2017; December 1, 2011.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16E .0302 is amended with changes as published in 31:23 2281 as follows:

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3 **04 NCAC 16E .0302 RETENTION, REPRODUCTION AND DISPOSITION OF RECORDS**

4 (a) Each savings ~~bank~~ institution shall take ~~reasonable~~ precautions to protect records from damage by fire, ~~flood~~ flood,
 5 or other ~~hazards~~, hazards and to safeguard records from unnecessary deterioration as a result of excess heat, humidity,
 6 ~~dryness~~ dryness, or lack of proper ventilation. ~~Adequate safeguards~~ Safeguards shall be maintained to protect records
 7 from access or removal by unauthorized persons.

8 (b) Each savings ~~bank~~ institution or branch ~~office thereof~~ office shall retain all records set forth in this Paragraph for ~~at~~
 9 ~~least~~ the periods specified.

10

<u>RECORDS TO BE</u>	<u>MINIMUM RETENTION</u>
<u>RETAINED</u>	<u>PERIOD (YRS.)</u>

13

14 ACCOUNTING - ASSOCIATION

15 <u>Bank Statements and Reconcilements</u>	5
16 <u>Cancelled Checks</u>	5
17 <u>Check Vouchers or Stubs</u>	5
18 <u>Duplicate Deposit Slips</u>	5
19 <u>Expense and Paid Bills File</u>	3
20 <u>FHLB and State Reports</u>	5
21 <u>General and Subsidiary Ledgers</u>	P 15
22 <u>General and Other Journals</u>	P 15
23 <u>Original Entry Records</u>	5
24 <u>Pre-authorized Bank Forms</u>	5
25 <u>Tellers' Cash Proof Sheets</u>	2
26 <u>Trial Balances</u>	3

27

28 CORPORATE

29 <u>Audit Reports</u>	3
30 <u>Pension Trust (IRS Ruling, Bylaws, Trust Agreements)</u>	T+5
31 <u>Annual Reports to Supervisors</u>	5
32 <u>Examination Reports and Supervisory Letters</u>	5
33 <u>Minute Books, (Members, Stockholder, Directors and Committees)</u>	P
34 <u>Charter, Bylaws and Amendments</u>	P
35 <u>Blanket Bonds</u>	T+5
36 <u>Ballots and Proxy Votes of Members and Stockholders</u>	3
37 <u>Certificate of Insurance</u>	P

1	FHLB Membership Certificate	P
2	Attachments, Executions and Releases	3
3	Claims, Court Orders and Restraining Orders	10
4	Deeds, Leases and Contracts; Titles to Vehicles	T + 5
5	U.S. Corporate Income Tax Forms	15
6	N.C. Corporate Tax Forms	15
7	Social Security and Unemployment Tax Records	15
8	Personal Property Tax Records	15
9		
10	<u>Annual Reports to Supervisors</u>	5
11	<u>Attachments, Executions, and Releases</u>	3
12	<u>Audit Reports</u>	3
13	<u>Ballots and Proxy Votes of Members and Stockholders</u>	3
14	<u>Blanket Bonds</u>	T + 5
15	<u>Certificate of Insurance</u>	P
16	<u>Charter, Bylaws, and Amendments</u>	P
17	<u>Claims, Court Orders, and Restraining Orders</u>	10
18	<u>Deeds, Leases, and Contracts; Titles to Vehicles</u>	T + 5
19	<u>Examination Reports and Supervisory Letters</u>	5
20	<u>FHLB Membership Certificate</u>	P
21	<u>Minute Books, Books (Members, Stockholder, Directors, and Committees)</u>	P
22	<u>N.C. Corporate Tax Forms</u>	15
23	<u>Pension Trust (IRS Ruling, Bylaws, and Trust Agreements)</u>	T + 5
24	<u>Personal Property Tax Records</u>	15
25	<u>Social Security and Unemployment Tax Records</u>	15
26	<u>U.S. Corporate Income Tax Forms</u>	15
27		
28	<u>ACCOUNTING – ASSOCIATION</u>	
29	<u>Bank Statements and Reconcilements</u>	5
30	<u>Cancelled Checks</u>	5
31	<u>Check Vouchers or Stubs</u>	5
32	<u>Duplicate Deposit Slips</u>	5
33	<u>Expense and Paid Bills File</u>	3
34	<u>FHLB and State Reports</u>	5
35	<u>General and Subsidiary Ledgers</u>	P
36	<u>General and Other Journals</u>	P
37	<u>Original Entry Records</u>	5

1	Pre-authorized Bank Forms	5
2	Tellers' Cash Proof Sheets	2
3	Trial Balances	3
4		
5	<u>DEPOSIT ACCOUNTS</u>	
6	Deposit	5
7	Inheritance Tax Releases	10
8	Cancelled Savings Certificates	5
9	Withdrawal Slips or Checks	
10	Affidavits for Lost Passbook or Certificate	P
11	Lost Instrument Bonds for Passbooks or Certificates	P
12	Power of Attorney or Affidavits	P
13	Signature Card Files	T+5
14	Savings Certificates Record of Issue	T+5
15	Deposit Account Loan Notes	R
16	Deposit Account Loan Disclosures After Note "Paid"	2
17	Deposit Account Assignment or Transfer Records	P
18	Returned 1099 Forms	6
19	No-Mail Notice	T+4
20		
21	<u>Affidavits for Lost Passbook or Certificate</u>	<u>P</u>
22	<u>Cancelled Savings Certificates</u>	<u>5</u>
23	<u>Deposit</u>	<u>5</u>
24	<u>Deposit Account Assignment or Transfer Records</u>	<u>P</u>
25	<u>Deposit Account Loan Disclosures After Note "Paid"</u>	<u>2</u>
26	<u>Deposit Account Loan Notes</u>	<u>R</u>
27	<u>Inheritance Tax Releases</u>	<u>10</u>
28	<u>Lost Instrument Bonds for Passbooks or Certificates</u>	<u>P</u>
29	<u>No-Mail Notice</u>	<u>T+4</u>
30	<u>Power of Attorney or Affidavits</u>	<u>P</u>
31	<u>Returned 1099 Forms</u>	<u>6</u>
32	<u>Savings Certificates Record of Issue</u>	<u>T+5</u>
33	<u>Signature Card Files</u>	<u>T+5</u>
34	<u>Withdrawal Slips or Checks</u>	<u>5</u>
35		
36	<u>INSURANCE</u>	
37	<u>Directors and Officers Liability</u>	<u>10</u>

1	<u>Fire and Extended Coverage, Auto Errors and Omissions</u>	<u>3</u>
2	<u>Public Liability - Workers Compensation</u>	<u>10</u>
3	<u>LOANS (Commercial, Consumer Credit, and Credit Cards)</u>	
4	<u>Borrowers' Statement</u>	<u>T + 3</u>
5	<u>Charged-off Loan Records</u>	<u>10</u>
6	<u>Collateral Records</u>	<u>10</u>
7	<u>Customer Application</u>	<u>T + 1</u>
8	<u>Disclosure Document</u>	<u>2</u>
9	<u>Interest Rebate Record</u>	<u>T + 3</u>
10	<u>Liability Card [and/or] or Ledger</u>	<u>T + 3</u>
11	<u>Loan Ledger Cards</u>	<u>T + 3</u>
12	<u>Loans Made Record</u>	<u>T + 3</u>
13	<u>Loans Paid Record</u>	<u>T + 3</u>
14	<u>Loan Proceeds Disbursement Records</u>	<u>T + 3</u>
15	<u>Merchant Agreement - Credit Card</u>	<u>T + 2</u>
16	<u>Note and/or Loan Register</u>	<u>P</u>
17	<u>Posting or Transaction Journal</u>	<u>3</u>
18	<u>Resolutions</u>	<u>T + 3</u>
19	<u>Sales Tickets or Drafts - Credit Card</u>	<u>3</u>
20	<u>Statement of Account - Credit Card</u>	<u>5</u>
21		
22	<u>MORTGAGE LOANS</u>	
23	<u>Loan Register</u>	<u>P</u>
24	<u>Mortgage Loan Disclosure Statement (Form HMDA-1)</u>	<u>5</u>
25	<u>Commitments</u>	<u>T + 3</u>
26	<u>Signature Cards</u>	<u>T + 3</u>
27	<u>Construction Loan Agreement</u>	<u>T + 3</u>
28	<u>Cost Estimates</u>	<u>T + 3</u>
29	<u>Inspection Reports</u>	<u>T + 3</u>
30	<u>Waiver of Liens</u>	<u>T + 3</u>
31	<u>Paid Bills for Borrowers Construction</u>	<u>T + 3</u>
32	<u>Affidavits</u>	<u>T + 3</u>
33	<u>Collection Records</u>	<u>T + 3</u>
34	<u>FHA Insurance Receipts</u>	<u>T + 3</u>
35	<u>Applications</u>	<u>T + 3</u>
36	<u>Appraisals</u>	<u>T + 3</u>
37	<u>Construction Loan Authorizations</u>	<u>T + 3</u>

1	Credit Reports	T+3
2	Escrow Agreements and Records	T+3
3	Title Opinions	T+3
4	Disclosure and Recision	T+3
5	Flood Insurance Documentation	T+3
6	Additional Collateral Agreement	T+3
7	Settlement Statement	T+3
8	Correspondence	T+3
9	Modifications	T+3
10		
11	<u>Additional Collateral Agreement</u>	T+3
12	<u>Affidavits</u>	T+3
13	<u>Applications</u>	T+3
14	<u>Appraisals</u>	T+3
15	<u>Collection Records</u>	T+3
16	<u>Commitments</u>	T+3
17	<u>Construction Loan Agreement</u>	T+3
18	<u>Construction Loan Authorizations</u>	T+3
19	<u>Correspondence</u>	T+3
20	<u>Cost Estimates</u>	T+3
21	<u>Credit Reports</u>	T+3
22	<u>Disclosure and Recision</u>	T+3
23	<u>Escrow Agreements and Records</u>	T+3
24	<u>FHA Insurance Receipts</u>	T+3
25	<u>Flood Insurance Documentation</u>	T+3
26	<u>Inspection Reports</u>	T+3
27	<u>Loan Register</u>	P
28	<u>Modifications</u>	T+3
29	<u>Mortgage Loan Disclosure Statement (Form HMDA-1)</u>	5
30	<u>Paid Bills for Borrowers Construction</u>	T+3
31	<u>Settlement Statement</u>	T+3
32	<u>Signature Cards</u>	T+3
33	<u>Title Opinions</u>	T+3
34	<u>Waiver of Liens</u>	T+3
35		
36	<u>LOANS (Commercial, Consumer Credit, Credit Cards)</u>	
37	<u>Borrowers' Statement</u>	T+3

1	Posting or Transaction Journal	3
2	Loan Proceeds Disbursement Records	T+3
3	Interest Rebate Record	T+3
4	Loans Made Record	T+3
5	Loans Paid Record	T+3
6	Liability Card and/or Ledger	T+3
7	Loan Ledger Cards	T+3
8	Note and/or Loan Register	P
9	Resolutions	T+3
10	Charged-off Loan Records	10
11	Collateral Records	10
12	Disclosure Document	2
13	Customer Application	T+1
14	Sales Tickets or Drafts—Credit Card	3
15	Statement of Account—Credit Card	5
16	Merchant Agreement—Credit Card	T+2
17		
18	<u>REAL ESTATE OWNED</u>	
19	Trustee's Report T+3	
20	Appraisal	T+3
21	Contracts for Sale	T+3
22	Leases	T+3
23	Tax Records	T+3
24	Deeds	T+3
25	PMI Claims	T+3
26	Notice of Intent to Foreclose	T+3
27	Title Policies	T+3
28		
29	<u>INSURANCE</u>	
30	Public Liability—Workers Compensation	10
31	Fire and Extended Coverage, Auto Errors and Omissions	3
32	Directors and Officers Liability	10
33		
34	<u>MISCELLANEOUS</u>	
35		
36	<u>Savings Bonds</u>	
37		

1	Applications	2
2	Duplicate Stubs	2
3	Letter of Transmittal of Bonds Redeemed	2
4	Monthly Report of Sales and Holdings	2
5		
6	<u>Travelers Checks</u>	
7		
8	Applications	2
9	Consignment Receipts	2
10		
11	<u>Personnel Records</u>	
12		
13	Time Cards	3
14	Group Insurance Records	T+6
15	Employment Applications	
16	1. Hired	T+3
17	2. Not Hired	3
18	Payroll Records	10
19		
20	<u>Safe Deposit Boxes</u>	
21		
22	Rent Receipts	3
23	Lease Contracts	T+3
24	History Cards	P
25		
26	<u>Investments</u>	
27		
28	Register	P
29	Purchase and Sale	T+3
30	Safe Keeping Receipts	T+3
31		
32	<u>Mail Register</u>	3
33		
34	<u>General Correspondence</u>	3
35		
36	<u>OSHA</u>	
37		

1	OSHA Records and Reports	6
2		
3	<u>Purchases, Sales and Participation</u>	
4		
5	Agreement	T+3
6	Sale List	T+3
7	Remittance Report	T+3
8		
9	<u>All Retirement Plan Accounts</u>	
10		
11	All Related Forms and Documents	T + 7
12		
13	<u>General Correspondence</u>	<u>3</u>
14		
15	<u>Investments</u>	
16		
17	<u>Purchase and Sale</u>	<u>T + 3</u>
18	<u>Register</u>	<u>P</u>
19	<u>Safe-Keeping Receipts</u>	<u>T + 3</u>
20		
21	<u>Mail Register</u>	<u>3</u>
22		
23	<u>OSHA</u>	
24		
25	<u>OSHA Records and Reports</u>	<u>6</u>
26		
27	<u>Personnel Records</u>	
28		
29	<u>Employment Applications</u>	
30	<u>1. Hired</u>	<u>T + 3</u>
31	<u>2. Not Hired</u>	<u>3</u>
32	<u>Group Insurance Records</u>	<u>T + 6</u>
33	<u>Payroll Records</u>	<u>10</u>
34	<u>Time Cards</u>	<u>3</u>
35		
36	<u>Purchases, Sales and Participation</u>	
37		

1	<u>Agreement</u>	<u>T + 3</u>
2	<u>Remittance Report</u>	<u>T + 3</u>
3	<u>Sale List</u>	<u>T + 3</u>
4		
5	<u>Safe Deposit Boxes</u>	
6		
7	<u>History Cards</u>	P
8	<u>Lease Contracts</u>	<u>T + 3</u>
9	<u>Rent Receipts</u>	<u>3</u>
10		
11	<u>Savings Bonds</u>	
12		
13	<u>Applications</u>	<u>2</u>
14	<u>Duplicate Stubs</u>	<u>2</u>
15	<u>Letter of Transmittal of Bonds Redeemed</u>	<u>2</u>
16	<u>Monthly Report of Sales and Holdings</u>	<u>2</u>
17		
18	<u>Travelers Checks</u>	
19		
20	<u>Applications</u>	<u>2</u>
21	<u>Consignment Receipts</u>	<u>2</u>
22		
23	<u>REAL ESTATE OWNED</u>	
24	<u>Appraisal</u>	<u>T + 3</u>
25	<u>Contracts for Sale</u>	<u>T + 3</u>
26	<u>Deeds</u>	<u>T + 3</u>
27	<u>Notice of Intent to Foreclose</u>	<u>T + 3</u>
28	<u>Leases</u>	<u>T + 3</u>
29	<u>PMI Claims</u>	<u>T + 3</u>
30	<u>Tax Records</u>	<u>T + 3</u>
31	<u>Title Policies</u>	<u>T + 3</u>
32	<u>Trustee's Report</u> T + 3	
33		
34	KEY TO SYMBOLS USED	
35	P - Permanent	
36	T - Termination (Closed, Paid off or Settled)	
37	R - Return to Customer After Termination of Contractual Relationship	

1 T = Termination (Closed, Paid-off, or Settled)

2

3 *History Note: Filed as a Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on*
4 *March 31, 1992;*

5 *Statutory Authority G.S. 54B-55; 54C-53;*

6 *Eff. February 15, ~~1992~~ 1992;*

7 *Amended Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

04 NCAC 16E .0403 is amended with changes as published in 31:23 2284 as follows:

04 NCAC 16E .0403 RECORDS WITH RESPECT TO LOANS

(a) ~~Mortgage Loans.~~ Each savings bank shall maintain records with respect to each loan on the security of real estate which shall include:

- ~~(1) An application signed by the borrower or his agent, containing adequate information which shall include the purpose of the loan, the identity of the property or properties securing the loan, and the purchase price of the property paid by or agreed to be paid by the applicant where the purpose of the loan is for the purchase of the real estate securing such loan;~~
- ~~(2) The credit ability of the applicant shall be ascertained in the application or by credit report, a financial report or by others at the request of the savings bank;~~
- ~~(3) A written appraisal report conforming to the written appraisal policy of the savings bank, signed and dated prior to the approval of the application;~~
- ~~(4) Evidence to show:
 - ~~(A) proper approval of the loan and the terms and conditions of such approval;~~
 - ~~(B) a loan settlement statement, signed by the borrower, showing the distribution of the loan proceeds;~~
 - ~~(C) the savings bank's approved attorney's title opinion or a valid title insurance policy from a title insurance company authorized to do business in North Carolina;~~
 - ~~(D) hazard insurance coverage;~~
 - ~~(E) release or releases of any portion of the collateral, with a revised appraisal of the remaining security retained; and~~
 - ~~(F) the loan agreement, inspection reports, owner's and contractor's affidavits and other necessary procedures on construction loans, where applicable;~~~~
- ~~(5) All loan modifications, properly executed and documented and recorded in the minutes;~~
- ~~(6) Record of insurance expirations unless a master mortgagee insurance policy is held in full force and effect;~~
- ~~(7) Tax records;~~
- ~~(8) A mortgage loan register to show:
 - ~~(A) account number;~~
 - ~~(B) borrower's name;~~
 - ~~(C) date of deed of trust;~~
 - ~~(D) appraisal;~~
 - ~~(E) interest rate;~~
 - ~~(F) monthly payment and date of first payment;~~
 - ~~(G) purpose of the loan and purchase price if for purchase of property securing the loan and the contract price if for purposes of construction; and~~~~

- 1 (H) — hypothecation, if any, designating hypothecator, amount, and type of pledge collateral; all to be
2 incorporated in the hypothecation agreement;
- 3 (9) — Records on acquisition of mortgaged security to include:
- 4 (A) — a detailed record of the acquisition, whether through foreclosure or otherwise, and a description of
5 the property or properties including the name of the former owner;
- 6 (B) — maintenance of subsidiary ledger accounts for each separate acquisition, to record all items
7 subject to capitalization or to income and expense during the period such property is owned by
8 the savings bank;
- 9 (C) — designation of all fees, charges and commissions and to whom such were paid;
- 10 (D) — a copy of the trustee's report relating to foreclosure, when applicable;
- 11 (10) — ~~A review of 60 days or over delinquent mortgage loans by the savings bank's board of directors or
12 executive committee at least once a month and such review to be recorded in the minutes of the Board of
13 Directors or Executive Committee meeting;~~
- 14 (11) — A "loans in process account" to support the undisbursed portion of the proceeds of each construction loan;
15 and
- 16 (12) — A certification signed by the borrower indicating that the borrower has received the disclosure material
17 required by the Federal Truth In Lending Act, 15 USC 1601 et. seq.

18 (b) ~~Deposit Account Loans. Each savings bank shall maintain records with respect to each loan secured by deposit accounts
19 which shall include a deposit account loan register. Such loan register or registers shall include:~~

- 20 (1) — account number; _____
- 21 (2) — borrower's name;
- 22 (3) — date of loan;
- 23 (4) — interest rate;
- 24 (5) — payment schedule.

25 (c) ~~Consumer Loans. Defined as loans for personal, family or household purposes and loans incident thereto, which may be
26 made as either open end or closed end consumer credit, but not including credit extended in connection with credit cards or
27 bona fide overdraft loans. Each institution shall maintain records with respect to each consumer loan which shall include:~~

- 28 (1) — ~~An application signed by the borrower or his agent, containing adequate information which shall include
29 the purpose of the loan, the identity of the collateral securing the loan and the purchase price of the
30 collateral where the purpose of the loan is to purchase said collateral.~~
- 31 (2) — ~~The credit ability of the applicant shall be ascertained in the application and supported by a written credit
32 report and a complete financial statement, verified and analyzed by a qualified loan officer.~~
- 33 (3) — ~~A written appraisal or value estimate of the collateral conforming to the written policies of the institution
34 and dated prior to the approval of the application if the loan is to be secured.~~
- 35 (4) — ~~An approved attorney's title opinion or valid title insurance policy issued by an insurance company
36 authorized to do business in North Carolina if the loan is underwritten based on the value of real estate
37 collateral.~~

- 1 (5) — Evidence to show:
- 2 (A) — proper approval of the loan and the terms and conditions of such approval;
- 3 (B) — the distribution of the loan proceeds;
- 4 (C) — proper insurance coverage on the collateral;
- 5 (D) — perfection of liens or security interest by proper endorsement of automobile titles and/or UCC
- 6 filings.

7 (6) — All loan modifications, extensions and renewals properly executed and documented and, if required by the

8 savings bank's consumer lending policy, recorded in the minutes.

9 (7) — A consumer loan register to show:

- 10 (A) — account number;
- 11 (B) — borrower's name;
- 12 (C) — date of loan;
- 13 (D) — interest rate;
- 14 (E) — payment schedule and date of first payment;
- 15 (F) — purpose of loan;
- 16 (G) — type and value of collateral, if secured.

17 ~~(d) Commercial Loans. Defined as any loan for commercial, corporate, business or agricultural purposes which would not~~

18 ~~otherwise qualify as a mortgage loan. Each institution shall maintain records with respect to each commercial loan which~~

19 ~~shall include:~~

20 (1) — An application signed by the borrower or his agent containing adequate information to include the purpose

21 of the loan, and the collateral securing the loan (if applicable).

22 (2) — The credit ability of the applicant shall be ascertained in the application and supported by a written credit

23 report and a complete set of current financial statements, verified and analyzed by a qualified loan officer.

24 (3) — A written appraisal report, if secured by real estate, or other written estimate of value conforming to the

25 institution's policies if secured by other than real estate.

26 (4) — Evidence to show:

- 27 (A) — proper approval of the loan and the terms and conditions of such approval;
- 28 (B) — a loan settlement statement, signed by the borrower, showing the distribution of the loan
- 29 proceeds;
- 30 (C) — adequate perfection of all liens and security interests including attorney's title opinion or valid
- 31 title insurance policy from a title insurance company authorized to do business in North Carolina
- 32 if secured by commercial real estate;
- 33 (D) — appropriate insurance on all collateral;
- 34 (E) — release or partial releases of collateral, with a revised appraisal of the remaining collateral;
- 35 (F) — all loan modifications, extensions and renewals, properly executed and documented and recorded
- 36 in the minutes.

37 (5) — A commercial loan register to show:

- (A) — account number;
- (B) — borrower's name;
- (C) — date of note;
- (D) — appraisal or other estimate of value;
- (E) — interest rate;
- (F) — payment schedule and date of first payment;
- (G) — loan purpose and type of collateral, if secured.

~~Unless otherwise provided, each~~ Each savings institution shall maintain the following loan documentation:

- (1) Financial Statements. Financial statements shall be required from any person who is a maker, co-maker, guarantor, endorser, or surety on any unsecured loans or other unsecured extensions of credit in an amount of fifty thousand dollars (\$50,000) or more in the aggregate. Financial statements required by this Item shall:
 - (a) be signed or ~~otherwise properly executed;~~ acknowledged by the maker;
 - (b) be dated within 18 months preceding the origination date of the credit obligation;
 - (c) be renewed within 18 months after the date of the last financial statement on file;
 - (d) be addressed to or made for the lending savings institution; and
 - (e) include information reflecting the assets, liabilities, net worth, and income of the borrower.
- (2) Financial Statement Exceptions. A savings institution may waive the financial statement required by Item (1) of this Rule for credit granted under a credit card. For an individual whose unsecured obligations consist of consumer loans scheduled to be repaid in at least quarterly installments, a savings institution may substitute a current credit bureau report for the financial statement required by Item (1) of this Rule. A credit bureau report shall be within 18 months from its date of issue.
- (3) Personal Property Appraisals. Appraisals on personal property used as collateral for a loan shall be obtained and shall be completed as follows:
 - (a) Except as provided by Item (3)(c), a written appraisal of personal property used to collateralize any loan shall be made or approved.
 - (b) Requirements. The appraisal required by this Item shall include:
 - (i) the name of the borrower;
 - (ii) the date the appraisal was made;
 - (iii) the value of the collateral;
 - (iv) the signatures of two people making the appraisal;
 - (v) a brief description of the property;
 - (vi) the amount of any senior lien and the holder of the lien, if any; and
 - (vii) the original amount or outstanding balance of the loan that the property is used to secure.
 - (c) Appraisal Exceptions. No appraisal shall be required under the following circumstances:
 - (i) on collateral to notes of less than fifty thousand dollars (\$50,000);

- 1 (ii) on loans fully secured by obligations of the United States or the State of North
2 Carolina;
- 3 (iii) on loans fully secured by deposits in the savings institution maintaining the loan
4 account; or
- 5 (iv) on loans fully secured by the cash surrender or loan value of life insurance policies.
- 6 (d) Renewal Exceptions. Appraisals need not be renewed biennially where a motor vehicle or
7 mobile home is the sole or partial collateral for a loan.
- 8 (e) Single Signature Exception. An appraisal may be performed and signed by only one person
9 where a motor vehicle or mobile home is the sole collateral for a loan.
- 10 (4) Real Estate Appraisals. Unless otherwise provided, all real estate taken as security for loans shall be
11 appraised in the form and manner set forth in Sub-item (4)(a) through (4)(c) of this Rule. In addition,
12 the appraisal shall be independent in that the appraiser shall not be involved in the loan transaction
13 secured by the property being appraised and shall have no interest, financial or otherwise, in the
14 property.
- 15 (a) The savings institution may elect to waive the requirement for an appraisal of real estate given
16 as security for loans of fifty thousand dollars (\$50,000) or less.
- 17 (b) Appraisals of real estate given as security for loans over fifty thousand dollars (\$50,000), but
18 not exceeding two hundred fifty thousand dollars (\$250,000), whether directly or indirectly
19 pledged as collateral, shall be prepared by:
- 20 (i) [Two] two members of the board of directors who are familiar with real estate values
21 in the community where the property is located;
- 22 (ii) [Two] two savings institution employees who are familiar with real estate values in
23 the community where the property is located, provided that one of the two employees
24 shall not be involved in the loan transaction secured by the property being appraised;
25 or
- 26 (iii) [A] a state-licensed real estate appraiser, ~~or~~ state-certified real estate appraiser, or a
27 person certified as a real estate appraiser by an appraisal trade organization approved
28 by the savings institution to perform an appraisal.
- 29 (c) Appraisals prepared pursuant to Sub-items (4)(b) of this Rule shall be in writing and shall be
30 signed and dated by the person or persons making the appraisal. The appraisal shall identify
31 the loan transaction for which it was made; identify the current balance of any senior lien and
32 the identity of the holder of the lien, if any; segregate values of improvements from values of
33 the land; and describe the property so as to make it identifiable. If a professional appraisal
34 form is used that does not include this information, the savings institution shall complete and
35 attach to the appraisal its own appraisal summary form disclosing the required information.
36 The appraisal shall state the basis or approach used to determine the value of the property.
37 Acceptable approaches to determining the value of real property [are:] shall be the following:

- 1 (i) the current cost of replacing a property, less depreciation relating to deterioration
2 from functional or economic obsolescence;
- 3 (ii) the value indicated by recent sales of comparable properties in the market and other
4 market factors such as listings and offers to sell; or
- 5 (iii) the value that the property's net earning power will support, based on a capitalization
6 of net income.
- 7 (d) All real estate given as security for loans in an amount over two hundred fifty thousand dollars
8 (\$250,000), whether directly or indirectly pledged as collateral, shall be appraised, and such
9 appraisal shall be subject to the provisions of 12 C.F.R. 323.1 through 12 C.F.R. 323.7, which
10 are hereby incorporated by reference including subsequent amendments or additions. This
11 information is available at the U.S. Printing Office website at [http://www.ecfr.gov/cgi-](http://www.ecfr.gov/cgi-bin/text-idx?SID=cb59b820da3e668ebb333139d429ce0c&node=pt12.5.323&rgn=div5)
12 bin/text-idx?SID=cb59b820da3e668ebb333139d429ce0c&node=pt12.5.323&rgn=div5 at no
13 [cost at the time this Rule was adopted.] cost.
- 14 (5) Certificate of Title. A title opinion furnished by an attorney at law, a title report or title insurance
15 policy issued by a company licensed by the Commissioner of Insurance, or other insurance coverage
16 that provides the savings institution with similar protection against loss from title defects, errors, or
17 omissions at closing or other loan-related risks shall be obtained in connection with each deed of trust
18 or mortgage given as security on each real estate-secured loan when:
- 19 (a) the loan is primarily secured by real property and only secondarily by the borrower's general
20 credit-worthiness; and
- 21 (b) the amount of the loan secured by the real property is fifty thousand dollars (\$50,000) or
22 more.
- 23 (6) Stock Certificate and Stock Powers. Where stock certificates or similar negotiable securities are
24 accepted as collateral for a loan, each certificate shall be either endorsed and witnessed or accompanied
25 by a stock power signed and [witnessed in ink] witnessed. Where such collateral is in the name of
26 someone other than the maker or endorser of the note, there shall be on file in the savings institution
27 written authority from the collateral owner permitting the hypothecation of the collateral.
- 28 (7) Corporate Resolutions. A loan made [directly] to a corporation shall be supported by a certified copy
29 of a resolution of the board of directors of the corporation authorizing the loan transaction.
- 30 (8) Partnership Declaration. A loan made [directly] to a partnership shall be supported by a declaration of
31 the general partners showing the composition of the partnership, and unless all partners sign the note,
32 the authority of the partner(s) executing the note to bind the partnership.
- 33 (9) Limited Liability Company Certification. A loan made [directly] to a limited liability company shall be
34 supported by a certification of a manager thereof that the loan has been duly authorized by the limited
35 liability company.
- 36 (10) Unlisted Securities. Full credit information on all unlisted securities, now owned or hereafter acquired,
37 shall be kept on file in the savings institution.

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*History Note: Filed as a Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on
March 31, 1992;
Statutory Authority G.S. 54C-53; 54C-128;
Eff. February 15, ~~1992~~ 1992;
Amended Eff. November 1, 2017.*

Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16E .0404 - .0405 are repealed with changes as published in 31:23 NCR 2287 & 2288 as
2 follows:

3

4 **04 NCAC 16E .0404 UNSECURED LOANS LIMIT**

5 **04 NCAC 16E .0405 LOANS TO ONE BORROWER**

6

7 *History Note: Filed as a Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on*
8 *March 31, 1992;*

9 *Statutory Authority G.S. 54C-53; 54C-121; 54C-128;*

10 *Eff. February 15, 1992.*

11 *Amended Eff. December 1, 2011.*

12 *Repealed Eff. November 1, 2017.*

Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16E .0601 - .0602 are repealed with changes as published in 31:23 NCR 2288 as follows:

2

3 **04 NCAC 16E .0601 LIQUIDITY**

4 **04 NCAC 16E .0602 NET WORTH**

5 *History Note: Filed as a Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on*
6 *March 31, 1992;*

7 *Statutory Authority G.S. 54C-53; 54C-162; **54C-163;***

8 *Eff. February 15, 1992.*

9 *Repealed Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16F .0101 is amended with changes as published in 31:23 2288 as follows:

2

3 **04 NCAC 16F .0101 PERMITTED ACTIVITIES**

4 The service corporation of a savings institution may engage in ~~those~~ activities ~~which~~ that are approved by the federal
5 regulatory authority pursuant to 12 C.F.R. 5.59(f) for service corporations owned ~~solely~~ by federal associations ~~which~~
6 that have principal offices in this ~~State~~, State and may engage in any other activity authorized for state-chartered savings
7 institutions and approved in advance in writing by the ~~Administrator~~. Commissioner of ~~[Banks.]~~ Banks ~~Such other~~
8 ~~activities shall be approved~~ only upon a showing by the savings institution that the activity enhances the safe and sound
9 operation of the savings institution, is properly well managed, is subject to adequate controls, and is not otherwise
10 violative of ~~law or regulation~~. North Carolina law. 12 C.F.R. 5.59(f) 1831o is hereby incorporated by reference,
11 including subsequent amendments or editions, and may be found free of charge as follows: [https://www.ecfr.gov/cgi-](https://www.ecfr.gov/cgi-bin/text-idx?SID=b1cbbe0d7d8194e47523927417a42a03&mc=true&node=se12.1.5_159&rgn=div8)
12 [bin/text-idx?SID=b1cbbe0d7d8194e47523927417a42a03&mc=true&node=se12.1.5_159&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=b1cbbe0d7d8194e47523927417a42a03&mc=true&node=se12.1.5_159&rgn=div8).

13

14 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on
15 March 31, 1992;

16 Statutory Authority G.S. 54B-55; 54B-194; 54C-53; 54C-144;

17 Eff. August 31, 1981;

18 Amended Eff. November 1, 2017; May 11, 1992; July 1, 1990; October 1, 1987.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16F .0103 is amended with changes as published in 31:23 2288 as follows:

2

3 **04 NCAC 16F .0103 DEBT LIMITATION FOR WHOLLY-OWNED SERVICE CORPORATIONS**

4 The aggregate amount of secured and unsecured debt ~~which~~ that a wholly-owned service corporation may have
5 outstanding at any one time to the savings institution and to non-stockholders shall not exceed:

6 (1) ten times the total of the service corporation's net worth and unsecured debt to the savings institution;
7 or

8 (2) twenty times ~~such~~ the total if the service corporation engages solely in originating, investing in, selling,
9 purchasing, servicing, or otherwise dealing in (including brokerage or warehousing) ~~loans, loans~~ and
10 participations in loans, ~~on a prudent basis~~ that are underwritten in accordance with the savings
11 institution's lending policy and secured by real estate or liens on mobile homes.

12

13 *History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on*
14 *March 31, 1992;*

15 *Statutory Authority G.S. 54B-55; 54B-194; 54C-53; 54C-144;*

16 *Eff. August 31, 1981;*

17 *Amended Eff. November 1, 2017; May 11, 1992.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0103 is amended with changes as published in 31:23 2289 as follows:

2

3 **04 NCAC 16G .0103 DEFINITIONS**

4 As used in this Subchapter ~~and in the forms prescribed under this Subchapter~~, the words and phrases defined by G.S.

5 54C-4 and the following definitions ~~apply, [apply:] unless the context otherwise requires; apply:~~

6 (1) ~~"Affiliate," "an~~ "An affiliate of," or "a person affiliated with" used in connection with another specified
7 person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is
8 under common control ~~with,~~ with the person specified.

9 (2) "Amount," when used in regard to securities, shall mean the principal amount if relating to evidences
10 of indebtedness, the number of shares if relating to shares of stock, ~~and or~~ the number of units if
11 relating to any other kind of security.

12 (3) "Applicant" shall mean a savings ~~bank which~~ institution that has applied to convert to stock ownership
13 pursuant to this Subchapter.

14 (4) "Broker" shall mean any person engaged in the business of effecting transactions in securities for the
15 account of others.

16 (5) ~~"Capital stock" shall mean common stock, permanent stock, guaranty stock, permanent reserve stock,
17 or any similar certificate evidencing nonwithdrawable capital.~~

18 ~~(6)~~ (5) "Dealer" shall mean any person who engages either for all or part of ~~his~~ their time, directly or
19 indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise
20 dealing or trading in securities issued by another person.

21 ~~(7)~~ (6) "Deposit account" shall mean that part of the liability of the savings ~~bank which~~ institution that is
22 credited to the account of the holder ~~thereof,~~ including certificates of deposit.

23 ~~(8)~~ (7) "Eligibility record date" shall mean the record date for determining eligible account holders of a
24 converting savings ~~bank.~~ institution.

25 ~~(9)~~ (8) "Eligible account holder" shall mean any person holding a qualifying deposit as determined in
26 accordance with Rule .0313 of this Subchapter.

27 ~~(10)~~ (9) "Employee" shall not mean a director or executive officer of a savings ~~bank.~~ institution.

28 ~~(11)~~ (10) "Equity security" shall ~~mean any stock or similar security, or any security convertible, with or without~~
29 ~~considerations, into such security, or carrying any warrant or right to subscribe to or purchase such~~
30 ~~security, or any such warrant or right.~~ [mean:] mean the following:

31 (a) any stock or similar security;

32 (b) any security convertible, with or without considerations, into a security, or carrying any
33 warrant or right to subscribe to or purchase a security; or

34 (c) any warrant or right to subscribe to or purchase a security.

35 ~~(12)~~ (11) "Executive Officer" shall mean any person performing a ~~policy-making~~ policy-making function with
36 respect to any ~~organization~~ organization, whether incorporated or unincorporated.

- 1 ~~(13)~~ (12) "Investment representative" shall mean a professional investment advisor acting as agent for the
2 purchaser and independent of the seller and not acting on behalf of the seller in connection with the
3 transaction.
- 4 ~~(14)~~ (13) "Market maker" shall mean a dealer who, with respect to a particular security:
5 (a) regularly publishes a bona fide, competitive ~~bid bid~~, and offer ~~quotations quotation~~ in a
6 recognized inter-dealer quotation ~~system; system~~ or furnishes bona fide competitive bid and
7 offer quotations on request; and
8 (b) is ready, ~~willing willing~~, and able to effect transactions in reasonable quantities at ~~his the~~
9 quoted prices with other brokers or dealers.
- 10 ~~(15)~~ (14) "Material," when used to qualify a requirement ~~for the furnishing of to provide~~ information as to any
11 subject, limits the information required to those matters as to which an average prudent investor ought
12 reasonably to be informed before purchasing an equity security of the applicant, or matters as to which
13 an average prudent savings ~~bank institution~~ member ought reasonably to be informed in voting upon
14 the plan of conversion of the applicant.
- 15 ~~(16)~~ (15) "Negotiated transactions" shall mean transactions in which the securities are offered and the terms and
16 arrangements relating to any sale of the securities are arrived at through direct communications
17 between the seller or any person acting in its ~~behalf, behalf~~ and the purchaser or his investment
18 representative.
- 19 ~~(17)~~ (16) "Offer," "offer to sell," or "offer of sale" shall mean every attempt or offer to dispose ~~of, of~~ or
20 solicitation of an offer to ~~buy, buy~~ a security or interest in a ~~security, security~~ for value. These terms
21 shall not include preliminary negotiations or agreements between an applicant and any underwriter or
22 among underwriters who are or will be in privity of contract with an applicant.
- 23 ~~(18)~~ (17) "Person" ~~includes an individual and entity as is~~ defined in G.S. 55-1-40.
- 24 ~~(19)~~ (18) "Proxy" shall mean every form of authorization by which a person is, or may be deemed to be,
25 designated to act for a savings ~~bank institution~~ member in the exercise of his ~~or her~~ voting rights in the
26 affairs of a savings ~~bank institution~~. ~~Such an An~~ authorization may take the form of failure to dissent
27 or object.
- 28 ~~(20)~~ (19) "Purchase" and "buy" shall mean every contract to ~~purchase, buy, or otherwise~~ acquire a security or
29 interest in a security for value.
- 30 ~~(21)~~ (20) "Sale" and "sell" shall mean every contract to ~~sell or otherwise~~ dispose of a security or interest in a
31 security for value.
- 32 ~~(22)~~ (21) "Security" shall mean any note, stock, treasury stock, bond, debenture, transferable share, investment
33 contract, voting-trust certificate, or in general, any instrument commonly known as a ~~"security".~~
34 ~~"security."~~ It shall also include any certificate of interest or participation in, temporary or interim
35 certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the ~~forgoing,~~
36 ~~foregoing.~~
- 37 ~~(23)~~ (22) "Solicitation" and "solicit" shall mean:

- 1 (a) any request for a proxy whether or not accompanied by or included in a form of proxy;
- 2 (b) any request to execute, not execute, or revoke a proxy; or
- 3 (c) ~~the furnishing of providing~~ a form of proxy or other communication to savings bank
- 4 institution members under circumstances reasonably calculated to result in the procurement,
- 5 withholding, or revocation of a proxy. The terms ~~do shall not apply,~~ apply however, to the
- 6 furnishing of a form of proxy to a savings bank institution member upon the unsolicited
- 7 request of the member, the performance of [performing] acts required by Rule .0514 of this
- 8 Subchapter, member or to the performance by any person of ministerial acts on behalf of a
- 9 person soliciting a proxy.

10 ~~(24)~~ (23) "Subscription offering" shall mean ~~the offering of~~ shares of capital stock, through nontransferable

11 subscription ~~rights issued~~ rights, to:

- 12 (a) eligible account holders as required by Rule .0311(2) of this Subchapter;
- 13 (b) supplemental eligible account holders as required by Rule .0311(4) of this Subchapter;
- 14 (c) members entitled to vote at the meeting called to consider the conversion as required by Rule
- 15 .0311(5) of this Subchapter;
- 16 (d) directors, executive officers, and employees, as permitted by Rule .0312(2) of this Subchapter;
- 17 and or
- 18 (e) eligible account holders, supplemental eligible account holders, and voting members as
- 19 permitted by Rule .0312(3) of this Subchapter.

20 ~~(25)~~ (24) "Subsidiary" of a specified person shall mean a person controlled, directly or indirectly, through one or

21 more intermediaries by the specified person.

22 ~~(26)~~ (25) "Supplemental eligible account holder" shall mean any person holding a qualifying deposit, except

23 executive officers, directors, and their associates, as of the supplemental eligibility record date required

24 by Rule .0311 of this Subchapter.

25 ~~(27)~~ (26) "Underwriter" shall mean any person who has purchased from an applicant with a view to, or any

26 person who offers or sells for an applicant in connection with, the distribution of any security; or

27 participates or has a direct or indirect participation in the direct or indirect underwriting of any ~~such~~

28 undertaking. ~~Such term~~ [Undertaking] Underwriting shall not include a person whose interest is

29 limited to a commission from an underwriter or dealer not in excess of the usual and customary

30 distributors' or sellers' commission. The term "principal underwriter" shall mean an underwriter in

31 privity of contract with the applicant or other issuer of securities as to which he or she is the

32 underwriter.

33

34 *History Note: Authority G.S. 54C-33; 54C-53;*

35 *Eff. February 15, 1992; 1992;*

36 *Amended Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0104 is amended with changes as published in 31:23 2290 as follows:

2

3 **04 NCAC 16G .0104 GENERAL REQUIREMENTS**

4 (a) No application for conversion shall be approved by the ~~administrator~~ Commissioner of Banks unless:

5 (1) The conversion ~~will~~ shall be conducted ~~as provided by law~~ in compliance with G.S. 54B or G.S. 54C,
6 [as applicable,] and this Subchapter and pursuant to a plan of conversion approved by the
7 ~~administrator.~~ Commissioner of Banks; and

8 (2) The conversion ~~will~~ shall not result in a taxable reorganization under the Internal Revenue Code.

9 (b) ~~The corporate existence of a mutual savings bank converting to stock ownership shall not terminate.~~ The converted
10 savings bank shall be deemed to be a continuation of the savings ~~bank~~ institution so converted.

11

12 *History Note: Authority G.S. 54C-33; 54C-53;*

13 *Eff. February 15, 1992; 1992;*

14 *Amended Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0106 is amended with changes as published in 31:23 2290 as follows:

2

3 **04 NCAC 16G .0106 CONFIDENTIAL INFORMATION**

4 Should the ~~[If an]~~ An applicant ~~desire to submit any~~ that submits information as part of an application may request that
5 the information be ~~it deems to be~~ of a confidential nature regarding the answer to any item or a part of any exhibit
6 included in the Application for Conversion, such [the] information pertaining to such item or exhibit shall be by
7 separately binding and labeling the information as ~~bound and labeled~~ "confidential," ~~[confidential]~~ "confidential," and a
8 statement shall be submitted ~~therewith~~ briefly setting forth the grounds on which ~~such~~ the information should be treated
9 as confidential ~~under~~ pursuant to G.S. 54C-60. Only general reference ~~thereto~~ need to ~~[such]~~ the confidential information
10 shall be made in that portion of the application ~~which that~~ the applicant ~~deems~~ requests not to be confidential. The
11 Commissioner of Banks shall review the request of the applicant and determine if the documents are confidential
12 pursuant to G.S. 54C-60. Applications under this Subchapter shall be made available for inspection by the public, except
13 for portions ~~which that~~ are bound and labeled "confidential" and ~~which that~~ the Commissioner of Banks determines to be
14 of a confidential nature ~~under~~ confidential pursuant to G.S. 54C-60. ~~The administrator will withhold the public~~
15 ~~availability of preliminary copies of proxy-soliciting materials without the necessity of their being bound and labeled as~~
16 ~~"confidential". Preliminary copies of proxy-soliciting materials shall be confidential regardless of whether they are~~
17 ~~bound and labeled as "confidential."~~ The applicant ~~will~~ shall be advised of any decision by the ~~administrator~~
18 Commissioner of Banks to make public information designated as "confidential" by the applicant. ~~Even though sections~~
19 ~~of the application are considered "confidential" as far as public inspection thereof is concerned, the administrator, to the~~
20 ~~extent permitted by G.S. 54C-60, Notwithstanding the provisions of this Rule and to the extent permitted by G.S. 54C-~~
21 ~~60, the Commissioner of Banks may comment on such the~~ confidential submissions in any public statement in connection
22 with any decision ~~on~~ regarding the application without prior notice to the applicant.

23

24 *History Note: Authority G.S. ~~53C-2-7;~~ 54C-33; 54C-53; ~~53C-2-7;1~~*

25 *Eff. January 15, ~~1992;~~ 1992;*

26 *Amended Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

04 NCAC 16G .0311 is amended with changes as published in 31:23 2291 as follows:

04 NCAC 16G .0311 REQUIRED PROVISIONS IN PLAN OF CONVERSION

The plan of conversion shall: ~~shall include the following:~~

- (1) Provide that the converting savings ~~bank~~ institution shall issue and sell its capital stock at a total price equal to the estimated pro forma market value of ~~such~~ the stock in the converted savings ~~bank~~, institution, based on an independent valuation, as provided in Rule .0717 of this Subchapter.
- (2) Provide that each eligible account holder shall ~~receive~~ receive, without payment, ~~[payment]~~ nontransferable subscription rights to purchase capital stock. Subscription rights shall be allocated among the eligible account holders on an equitable basis in an amount not greater than the maximum purchase limitation established for the public offering or the direct community offering. The plan of conversion shall provide a comprehensive description of this allocation including a detailed description of the allocation in the event of an oversubscription of the capital stock. In the event of an oversubscription, shares shall be allocated on an equitable basis that is related to the amount of the subscriber's qualifying deposits.
- (3) Provide that nontransferable subscription rights to purchase capital stock received by executive officers and directors of the applicant and their ~~associates~~ associates, based on their increased deposits in the applicant savings ~~bank~~ institution in the one-year period preceding the eligibility record ~~date~~ date, shall be subordinated to all other subscriptions involving the exercise of nontransferable subscription rights to purchase shares pursuant to ~~Paragraph~~ Item (2) of this Rule.
- (4) ~~Provide that, in~~ In plans involving an eligibility record date that is more than 15 months prior to the date of the latest amendment to the application for conversion filed prior to the ~~administrator's~~ Commissioner of Banks' approval, provide that a supplemental eligibility record date shall be determined whereby each supplemental eligible account holder of the applicant shall ~~receive~~ receive, without payment, nontransferable subscription rights to purchase capital stock in an amount related to ~~his/her~~ his or her respective qualifying deposits.
 - (a) Subscription rights received pursuant to ~~Paragraph~~ Item (4) of this Rule shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to ~~Paragraphs~~ Items (2) and (3) of this Rule.
 - (b) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with ~~Paragraph~~ Item (2) of this Rule shall be applied in

1 partial satisfaction of the subscription rights to be distributed pursuant to this
2 ~~Paragraph, Item.~~

3 (c) In the event of an oversubscription for supplemental shares pursuant to this
4 ~~Paragraph, Item,~~ shares shall be allocated among the subscribing supplemental
5 eligible account holders on ~~such an~~ equitable basis, related to the amounts of their
6 respective qualifying deposits, as may be provided in the plan of conversion.

7 (5) Provide that voting members who are not either eligible account holders or supplemental
8 eligible account holders shall receive, without payment, nontransferable subscription rights to
9 purchase capital stock on an equitable basis defined in the plan of conversion. Subscription
10 rights received pursuant to this ~~Paragraph Item~~ shall be subordinated to all rights received by
11 eligible account holders and supplemental eligible account holders to purchase shares
12 pursuant to ~~Paragraphs Items~~ (2), (3), and (4) of this Rule. In the event of an
13 oversubscription of capital stock pursuant to this ~~Paragraph, Item,~~ shares shall be allocated
14 among the subscribing voting members on such equitable basis as may be provided in detail
15 in the plan of conversion.

16 (6) Provide that any shares of the applicant not sold to persons with subscription rights shall
17 either be sold in a public offering through an underwriter or directly by the applicant in a
18 direct community offering, subject to the applicant demonstrating to the ~~administrator~~
19 Commissioner of Banks the feasibility of the method of sale and ~~to such of~~ conditions as may
20 be provided in the plan of conversion. ~~Such conditions~~ Conditions shall include, but not be
21 ~~limited to:~~ may [include:] include the following:

22 (a) ~~A condition limiting~~ Limiting ~~limiting~~ purchases in the public offering or the direct
23 community offering by any person together with any associate or group of persons
24 acting in concert to a percentage of the total offering of shares not exceeding five
25 percent; ~~except that any one or more tax-qualified employee stock benefit plans of~~
26 ~~the applicant may purchase in the aggregate not more than ten percent of the total~~
27 ~~offering of shares and shall be entitled to purchase such amount regardless of the~~
28 ~~number of shares to be purchased by other parties, and that shares held by one or~~
29 ~~more tax-qualified employee stock benefit plans and attributed to a person shall not~~
30 ~~be aggregated with other shares purchased directly by or otherwise attributable to that~~
31 ~~person. that:~~

32 (i) any one or more tax-qualified employee stock benefit plans of the
33 applicant may purchase in the aggregate not more than ten percent of
34 the total offering of shares and shall be entitled to purchase that

1 amount regardless of the number of shares to be purchased by other
2 parties; and

3 (ii) that shares held by one or more tax-qualified employee stock benefit
4 plans and attributed to a person shall not be aggregated with other
5 shares purchased directly by or otherwise attributable to that person.

6
7 (b) ~~A condition requiring~~ [Requiring] requiring that orders for stock in any public
8 offering or direct community offering shall first be filled up to a maximum of two
9 percent of the conversion stock per order and thereafter remaining shares shall be
10 allocated on an equal number of shares basis per order until all orders have been ~~filled.~~
11 filled;

12 (c) ~~A condition requiring the~~ [Requiring] requiring ~~that~~ stock to be offered and sold in
13 the public offering or the direct community offering ~~to shall~~ be offered and sold in a
14 manner requiring that will achieve the widest distribution of the ~~stock.~~ stock; or

15 (d) ~~A condition that any~~ [Any] any direct community offering by the applicant shall give
16 a preference to ~~natural persons~~ a person residing in the counties in which the
17 applicant has an office.

18 (7) Provide that the number of shares ~~which~~ that any person together with any associate or group
19 of persons acting in concert may subscribe or purchase in the conversion shall not exceed five
20 percent of the total offering of ~~shares; shares,~~ except that any one or more tax-qualified
21 employee stock benefit plans of the applicant may purchase in the aggregate not more than 10
22 percent of the total offering of shares. Shares held by one or more tax-qualified or
23 non-tax-qualified employee stock benefit plans and attributed to a person shall not be
24 aggregated with shares purchased directly by or otherwise attributable to that person. For
25 purpose of this ~~Paragraph, Item~~ the members of the converting savings ~~bank's~~ institution's
26 board of directors shall not be deemed to be associates or a group of persons acting in concert
27 solely as a result of their board membership.

28 (8) Provide that for a period of three years following the conversion no executive officer or
29 director or any associate of an executive officer or director shall purchase without the prior
30 written approval of the ~~administrator~~ Commissioner of Banks the capital stock of the
31 converted savings ~~bank~~ institution except from a broker or dealer registered with the Secretary
32 of State of North Carolina ~~and/or~~ or the Securities and Exchange Commission. This provision
33 shall not apply to negotiated transactions involving more than one percent of the outstanding
34 capital stock of the converted savings ~~bank~~ institution or to purchases of stock made by and

1 held by any one or more tax qualified or non-tax-qualified employee stock benefit plans of the
2 applicant ~~which that~~ may be attributable to executive officers or directors.

- 3 (9) Provide that the sales price of the shares of capital stock to be sold in the conversion shall be a
4 uniform price ~~determined in accordance with Rule .0714 of this Subchapter~~ and specify the
5 underwriting and other marketing arrangements to be made to assure the sale of any shares not
6 sold in the subscription offering.
- 7 (10) Provide that each deposit account holder of the converting savings ~~bank~~ institution shall
8 receive, without payment, a deposit account or accounts in the converted savings ~~bank~~
9 institution equal in amount to the value of ~~such the~~ account holder's deposit account or accounts
10 in the converting savings ~~bank~~ institution.
- 11 (11) Provide for the establishment and maintenance of a liquidation account for the benefit of
12 eligible account holders and supplemental eligible account holders in the event of a subsequent
13 complete liquidation of the converted savings ~~bank~~, ~~in accordance with the provisions of Rule~~
14 ~~.0314 of this Section.~~ institution.
- 15 (12) Provide for an eligibility record date ~~which that~~ shall be not less than 90 days prior to the date
16 of adoption of the plan by the converting savings ~~bank's~~ institution's board of directors.
- 17 (13) Provide that the holders of the capital stock of the converted savings ~~bank~~ institution shall
18 have exclusive voting rights.
- 19 (14) Provide that the plan of conversion adopted by the applicant's board of directors may be
20 substantively amended by ~~such the~~ board of directors prior to the solicitation of proxies from
21 members to vote on the plan and at any time thereafter with the concurrence of the
22 ~~administrator, Commissioner of Banks,~~ and that the conversion may be terminated by the
23 board of directors at any time prior to the meeting of members called to consider the plan of
24 conversion and at any time thereafter with the concurrence of the ~~administrator, Commissioner~~
25 of Banks.
- 26 (15) Establish a time period within which the conversion ~~must shall~~ be completed prior to
27 termination. This time period ~~shall be not~~ shall not be more than 12 months from the date the
28 members approve the plan of conversion. This time period may be extended an additional 12
29 months by a plan amendment.
- 30 (16) Provide that all shares of capital stock purchased by directors and executive officers on
31 original issue in the conversion either directly from the applicant (by subscription or
32 otherwise) or from an underwriter of ~~such~~ shares, shall be subject to the restriction that such
33 shares shall not be sold for a period of not less than one year following the date of purchase,
34 [purchase] except in the event of death of the director or executive officer. The ~~administrator~~

1 Commissioner of Banks may grant permission for the transfer of restricted stock upon a
2 determination that the restriction imposes a substantial personal financial hardship on ~~such the~~
3 individual due to changed unforeseeable circumstances outside the control of ~~such the~~
4 individual.

5 (17) Provide that, in connection with shares of capital stock subject to restriction on sale under
6 ~~Paragraph Item~~ (16) of this Rule:

7 (a) Each certificate for such stock shall bear a legend giving appropriate notice of the
8 applicable restrictions;

9 (b) ~~Appropriate instructions~~ Instructions shall be issued to the transfer agent for the
10 converted savings ~~bank's~~ institution's capital stock with respect to applicable
11 restrictions on transfer of any restricted stock; and

12 (c) Any shares issued as a stock dividend, stock split ~~split~~ split, or otherwise with
13 respect to any restricted stock shall be subject to the same restrictions as may apply to
14 the restricted stock.

15 (18) Provide that the converting savings ~~bank~~ institution shall:

16 (a) ~~use its best efforts to~~ encourage and assist a market maker to establish and maintain a
17 market for the securities issued in connection with the conversion; and

18 (b) ~~use its best efforts to~~ list those shares issued in connection with the conversion on a
19 national or regional securities ~~exchange~~ exchange, or on the NASDAQ system.

20 (19) Provide that the expenses incurred in the conversion shall be reasonable.

21 (20) Contain no provision ~~which that the administrator may determine~~ Commissioner of Banks
22 finds to be inequitable or detrimental to the applicant, its account holders or other savings
23 banks or to be contrary to the public interest.

24 (21) Contain no provision ~~which that the administrator~~ Commissioner of Banks finds will harm the
25 community and public served by the savings ~~bank.~~ institution.

26 (22) Provide that the converting savings bank shall not loan funds or otherwise extend credit on an
27 unsecured basis or upon the security of the savings ~~bank's~~ institution's capital stock to any
28 person to purchase the capital stock of the converting savings ~~bank.~~ institution.

29 (23) Provide that the savings ~~bank~~ institution may make scheduled discretionary contributions to a
30 tax-qualified employee stock benefit plan provided ~~such the~~ contributions do not cause the
31 savings ~~bank~~ institution to fail to meet its net worth requirements.

32
33 *History Note: Authority G.S. 54C-33; 54C-53;*
34 *Eff. February 15, 1992;*

1 *Amended Eff. November 1, 2017; May 3, 1993.*

Permanent Amendment for Publication in the NCAC

04 NCAC 16G .0312 is amended with changes as published in 31:23 2294 as follows:

04 NCAC 16G .0312 ~~OPTIONAL PROVISION~~ PROVISIONS IN PLAN OF CONVERSION

The plan of conversion may provide any ~~or all~~ of the following:

- (1) ~~That the~~ The applicant may commence the direct community offering or the public offering, or both, concurrently with or at any time during the subscription offering. The subscription offering may be commenced concurrently with or at any time after the mailing to members pursuant to Rule .0607 of ~~this Subchapter~~ of the proxy statement authorized for use by the ~~administrator~~. Commissioner of Banks. The subscription offering may be closed before the meeting of the members held to vote on the plan of conversion, provided that the offer and sale of capital stock shall be conditioned upon the approval of the plan of conversion by the ~~members as provided in Section .0600 of this Subchapter~~. members.
- (2) ~~That directors,~~ Directors, executive officers, and employees of the converting savings ~~bank~~ institution shall receive, without payment, nontransferable subscription rights to purchase shares of capital stock, to the extent that shares are available after satisfying the subscriptions of eligible account holders, supplemental eligible account holders, and voting members provided for under ~~Paragraphs Items~~ (2), (4) and (5) of Rule .0311 of this Section. The shares shall be allocated among directors, officers, and employees on an equitable basis such as by giving weight to length of service, compensation, and position, subject to the limitation in ~~Paragraph Item~~ (7) of Rule .0311 of this Section on the amount of shares ~~which that~~ may be purchased by any person, ~~associate thereof,~~ associate, or group of affiliated persons or group of persons otherwise acting in concert.
- (3) ~~That any~~ Any account holder receiving rights to purchase stock in the subscription offering shall also receive, without payment, nontransferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that ~~such~~ the shares are available after satisfying the subscriptions provided for under ~~Paragraphs Items~~ (2), (4), and (5) of Rule .0311 of this Section, subject to ~~such~~ conditions as may be provided in the plan of conversion. In the event of an oversubscription for ~~such~~ the additional shares, the shares available shall be allocated among the subscribing eligible account holders, supplemental eligible account holders, and voting members on ~~such an equitable basis,~~ basis related to the amounts of their respective subscriptions, as may be provided in the plan of conversion.
- (4) ~~That the~~ The applicant may require members to return by a ~~reasonable~~ date certain a postage-paid written communication provided by the ~~applicant~~ applicant, requesting receipt of a subscription offering ~~circular,~~ circular or a preliminary or final offering circular in an offering pursuant to ~~Paragraph~~ Item (10) of this Rule, in order to be entitled to receive an offering circular from the applicant; provided, that the subscription offering or the offering pursuant to ~~Paragraph~~ Item (10) of this Rule shall not be closed until 30 days after the mailing by the applicant to members of the postage-paid written communication. If the subscription offering or the offering pursuant to ~~Paragraph~~ Item (10) of

1 this Rule is not commenced within 45 days after the meeting of members, any converting savings bank
2 institution adopting this optional provision shall ~~transmit~~ transmit, not more than 30 days prior to the
3 commencement of the subscription offering or the offering pursuant to ~~Paragraph Item~~ (10) of this Rule
4 to each member who had been furnished with proxy solicitation materials, written notice of the
5 commencement of the offering ~~which notice that~~ shall state that the converting savings bank institution
6 is not required to furnish an offering circular to a member unless the member returns by a reasonable
7 date certain the postage-paid written communication provided by the converting savings bank
8 institution requesting receipt of an offering circular.

- 9 (5) ~~That the~~ The applicant may require eligible account holders and supplemental eligible account holders
10 who are not voting members ~~pursuant to Rule .0608 of this Subchapter~~ to return by a reasonable date
11 certain a postage-paid written communication in accordance with the procedure established in
12 ~~Paragraph Item~~ (4) of this Rule.
- 13 (6) ~~That any~~ Any insignificant residue of shares of the converting savings bank institution not sold in the
14 subscription ~~offering or offering~~, in a public offering offering, or direct community offering may be
15 sold ~~in such other manner~~ as provided in the plan of conversion with the written consent of the
16 ~~administrator.~~ Commissioner of Banks.
- 17 (7) ~~That the~~ The number of shares ~~which that~~ any person or group of persons affiliated with each other or
18 otherwise acting in concert may subscribe for in the subscription offering may be made subject to a
19 limit of not less than one percent of the total offering of the shares.
- 20 (8) ~~That any~~ Any person exercising subscription rights to purchase capital stock shall be required to
21 purchase a minimum number of ~~shares shares~~, but the aggregate price for any minimum share purchase
22 shall not exceed five hundred dollars (\$500.00).
- 23 (9) ~~That the~~ The converted savings bank institution shall issue and sell, in lieu of shares of its capital
24 stock, units of securities consisting of capital stock and long-term warrants or other equity securities, in
25 which event any reference in the provisions of this Subchapter to capital stock shall apply to ~~such~~ units
26 of equity securities unless the context otherwise requires.
- 27 (10) ~~That, instead~~ Instead of a separate subscription offering, all subscription rights issued in connection
28 with the conversion shall be exercisable by delivery of ~~properly~~ completed and executed order forms to
29 the underwriters or selling group for the public offering or pursuant to any other procedure, subject to
30 the applicant demonstrating to the ~~administrator~~ Commissioner of Banks the feasibility of the method
31 of exercising such right and to such conditions as shall be provided in the plan of conversion.
- 32 (11) ~~That the~~ The ~~administrator~~ Commissioner of Banks may approve ~~such~~ other equitable provisions as
33 necessary to avert ~~imminent~~ injury to the converting savings bank institution.
- 34 (12) ~~That the~~ The proxy statement ~~required authorized~~ by ~~Rule .0607 of this Subchapter~~ G.S. 54B-33 or
35 54C-33 may be in summary form, ~~provided:~~ provided the proxy meets the requirements of 04 NCAC
36 16G .0512. requirements.

1 (a) ~~A statement is made in bold faced type on the summary proxy statement that a more detailed~~
2 ~~description of the proposed transaction may be obtained by returning an attached postage paid~~
3 ~~postcard or other written communication requesting a supplemental information statement~~
4 ~~which, together with the summary proxy statement, complies with the requirements of Form~~
5 ~~PS contained in the Application for Conversion.~~

6 (b) The date on which the summary proxy statement is mailed to members ~~will shall~~ be deemed
7 the date on which notice is ~~given for purposes of Rule .0607 of this Subchapter. given.~~
8 Without the prior written consent of the ~~administrator~~ Commissioner of Banks, the meeting of
9 members shall not be held less than 20 days after the date on which the supplemental
10 information statement is mailed to requesting members.

11 (c) ~~The supplemental information statement required to be furnished to members pursuant to~~
12 ~~Subparagraph (a) of this Paragraph may be combined with Form OC, if the subscription~~
13 ~~offering is commenced concurrently with or during the proxy solicitation period pursuant to~~
14 ~~Paragraph (1) of this Rule.~~

15 (d) ~~The form of the summary proxy statement has been approved by the administrator.~~

16 (13) ~~That, in~~ In the event that the converting institution is establishing a tax-qualified employee stock
17 ownership plan (ESOP) for the benefit of its employees, then notwithstanding the priorities established
18 under ~~Subparagraphs~~ Items (2), (4), and (5) of Rule .0311 of this Section, the plan of conversion may
19 provide that ~~such the~~ ESOP may purchase up to 10 percent of the aggregate shares offered in the
20 conversion prior to offering ~~any~~ shares to eligible account holders, supplemental eligible account
21 ~~holders~~ holders, or other voting members.

22 (14) ~~That eligible~~ Eligible ~~accountholders~~ account ~~holders,~~ holders shall be divided into two subcategories
23 for purposes of determining the aggregate number of shares of conversion stock allocated to be
24 purchased by ~~such~~ accountholders account holders in each subcategory: those whose permanent
25 residence is within the market area of the converting institution and those whose permanent residence
26 is outside the market area of the converting institution. ~~The A~~ A plan of conversion that divides
27 [accountholders] account holders into subcategories shall provide:

28 (a) That each eligible accountholder who resides within the applicant's market area shall receive
29 nontransferable subscription rights to purchase a number of shares based on ~~such the~~
30 accountholder's qualifying deposit balance up to the maximum purchase limitation established
31 pursuant to Rule .0311(7) of this ~~Section;~~ Section, provided that the aggregate number of
32 shares of conversion stock to be allocated for purchase by eligible ~~accountholders~~ account
33 holders within the converting institution's market area shall equal that number of shares
34 (rounded to the nearest whole number) determined by multiplying the total number of shares
35 of stock to be sold in the offering times a fraction the numerator of which is the sum of
36 qualifying deposits held by eligible ~~accountholders~~ account holders residing inside the market
37 area and the denominator of which is the sum of all qualifying deposits.

- 1 (b) That each eligible ~~accountholder~~ account holder who resides outside the applicant's market
 2 area shall receive nontransferable subscription rights to purchase a number of shares based on
 3 ~~such accountholder's~~ the account holder's qualifying deposit balance up to the maximum
 4 purchase limitations established pursuant to Rule .0311(7) of this ~~Section;~~ Section, provided
 5 that the aggregate number of shares of conversion stock to be allocated for purchase by
 6 eligible ~~accountholders~~ account holders outside the converting institution's market area shall
 7 equal that number of shares (rounded to the nearest whole number) determined by multiplying
 8 the total number of shares of stock to be sold in the offering times a fraction the numerator of
 9 which is the sum of qualifying deposits held by eligible ~~accountholders~~ account holders
 10 residing outside the converting institution's market area and the denominator of which is the
 11 sum of all qualifying deposits.
- 12 (c) Within each subcategory, a formula to be used in the event of an oversubscription for the
 13 equitable allocation of shares of stock within ~~such the~~ subcategory ~~which that~~ relates to an
 14 eligible ~~accountholder's~~ account holder's qualifying deposit balance.
- 15 (d) For the purposes of this ~~Paragraph,~~ Item, Item, a converting institution shall define its "market
 16 area" to include each county in which it has an office and may include ~~such~~ additional
 17 counties contiguous to those counties in which it maintains an ~~office (regardless office,~~
 18 regardless of whether such counties are in the State of North ~~Carolina)~~ Carolina. ~~as it may~~
 19 ~~designate to be part of its "market area" in its plan of conversion.~~

21 *History Note:* Authority G.S. 54B-33; 54C-33; 54C-53;
 22 Eff. February 15, 1992;
 23 Amended Eff. November 1, 2017; September 1, 1993; April 15, 1993.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0315 is amended with changes as published in 31:23 2296 as follows:

2

3 **04 NCAC 16G .0315 MANIPULATIVE AND DECEPTIVE DEVICES**

4 In the offer, sale, or purchase of securities issued incident to its conversion, no savings **bank, institution,** ~~or any~~ director,
5 executive officer, attorney, **agent agent,** or employee ~~thereof~~ shall:

- 6 (1) employ any device, scheme, or artifice to defraud; **or**
7 (2) obtain money or property by means of any untrue statement of a material fact or any omission to state a
8 material fact necessary in order to make the statements made, in the light of the circumstances ~~under~~
9 ~~which~~ that they were made, not misleading; or
10 (3) engage in any act, transaction, practice, or course of business ~~which~~ that operates or would operate as a
11 fraud or deceit upon a purchaser or seller.
12

13 *History Note: Authority G.S. 54C-33; 54C-53;*
14 *Eff. February 15, 1992; 1992;*
15 *Amended Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0509 is amended with changes as published in 31:23 2297 as follows:

2

3 **04 NCAC 16G .0509 SOLICITATIONS TO WHICH RULES APPLY**

4 This Section applies to every solicitation of a proxy from a member of a savings ~~bank~~ institution for the meeting ~~at which~~
5 that a plan of conversion will be voted upon, except the following:

- 6 (1) any solicitation made otherwise than on behalf of the management of the savings ~~bank~~ institution
7 where the total number of persons solicited is not more than 50; or
- 8 (2) any solicitation through the medium of a newspaper advertisement ~~which~~ that informs members,
9 following approval of the plan of conversion, of a source from which they may obtain copies of a proxy
10 statement, form of proxy, or any other solicitation material and ~~does~~ shall contain no more than:
- 11 (a) name the savings ~~bank,~~ [bank;] institution;
- 12 (b) state the reason for the ~~advertisement,~~ advertisement;
- 13 (c) identify the proposal or proposals to be acted upon by ~~members,~~ members; and
- 14 (d) urge members to vote at the meeting.

15

16 *History Note:* Authority G.S. 54B-33; 54C-33; 54C-53;

17 Eff. February 15, 1992; 1992;

18 Amended Eff. November 1, 2017.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0510 is amended with changes as published in 31:23 2297 as follows:

2

3 **04 NCAC 16G .0510 USE OF PROXY SOLICITING MATERIAL TO BE AUTHORIZED**

4 ~~No proxy solicitation material required to be filed with the administrator prior to use shall be furnished to members or~~
5 ~~otherwise released for distribution until the use of such material has been authorized in writing by the administrator.~~

6 Proxy solicitation material shall not be furnished to members or distributed until the material has been authorized, ~~in~~

7 writing,] in writing by the Commissioner of Banks. Proxy solicitation material authorized for use by the ~~administrator~~

8 Commissioner of Banks shall be mailed to the members within 10 days of ~~such~~ authorization or within 10 days of the

9 date ~~such~~ that the material is declared effective by the Securities and Exchange Commission, if applicable, whichever is

10 later. The ~~administrator~~ Commissioner of Banks may ~~extend~~ approve in writing to extend ~~such~~ the date upon a showing

11 that adherence to the ~~10-day~~ 10-day rule would ~~work~~ cause a hardship upon the savings institution and that the ~~delay,~~

12 ~~delay if approved in writing,~~ would not be disadvantageous to any interested party.

13

14 *History Note:* Authority G.S. 54B-33; 54C-33; 54C-53;

15 *Eff. February 15, 1992;*

16 *Amended Eff. November 1, 2017; April 15, 1993.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0512 is amended with changes as published in 31:23 2297 as follows:

3 **04 NCAC 16G .0512 REQUIREMENTS AS TO PROXY**

4 (a) The form of proxy shall:

- 5 (1) indicate in bold face type whether the proxy is solicited on behalf of management;
- 6 (2) provide ~~specifically designated~~ blank spaces for dating and signing the proxy;
- 7 (3) identify ~~clearly and impartially~~ each matter or group of related matters intended to be acted upon;
- 8 (4) be ~~clearly~~ labeled "Revocable Proxy" in bold face ~~type of at least 18 point; type;~~
- 9 (5) describe any charter or state law **requirement** restricting or conditioning voting by proxy;
- 10 (6) contain an acknowledgement by the person giving the proxy that the person has received a proxy
11 statement prior to signing the form of proxy;
- 12 (7) contain the date, time, and place of meeting, if practicable;
- 13 (8) provide, by a box or otherwise, a means whereby the person solicited is afforded an opportunity to
14 specify by ballot a choice between approval or disapproval of each matter intended to be acted upon;
15 and
- 16 (9) indicate in bold face type how the proxy shall be voted on each ~~such~~ matter if no choice is specified.

17 (b) No proxy obtained pursuant to the conversion shall confer authority to vote at any meeting other than the meeting, or
18 any adjournment thereof, to vote on the plan of conversion. A proxy may be deemed to confer authority to vote with
19 respect to matters incident to the conduct of ~~such the~~ meeting. If the plan of conversion is considered at an annual
20 meeting, existing proxies may be voted with respect to matters not related to the plan of ~~conversion or in accordance with~~
21 Paragraph (d) of this Rule. conversion.

22 (c) The proxy statement or form of proxy shall provide that the votes represented by the proxy will be voted. Where the
23 person solicited specifies by means of a ballot provided pursuant to **Subsection Subparagraph** (a)(8) of this Rule a choice
24 with respect to any matter to be acted upon, the votes **will shall** be voted in accordance with the specifications. If no
25 choice is specified, the votes **will shall** be cast as indicated in bold face type on the form of proxy.

26 ~~(d) Notwithstanding any other provisions of this Rule, the proxy may be in a form previously obtained from a voting~~
27 ~~member and conferring general authority to vote on any and all matters at any meeting of the members or other authority~~
28 ~~to vote on matters to be presented at the special meeting; provided, that such voting member has been furnished a proxy~~
29 ~~statement and the voting member does not grant a later dated proxy to vote at the meeting to consider the plan of~~
30 ~~conversion or attend the meeting and vote in person.~~

31
32 *History Note: Authority G.S. 54C-33; 54C-53;*
33 *Eff. February 15, 1992; 1992;*
34 *Amended Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0513 is amended with changes as published in 31:23 2298 as follows:

3 **04 NCAC 16G .0513 MATERIAL REQUIRED TO BE FILED**

4 (a) An applicant shall file a preliminary copy of the proxy materials to be used by ~~such~~ the applicant as a part of the
5 application for conversion filed with the ~~administrator.~~ Commissioner of Banks.

6 ~~(b) A preliminary copy of any additional solicitation material, including press releases and radio or television scripts, to
7 be used or furnished to members subsequent to furnishing the proxy statement, shall be filed with the administrator at
8 least five business days prior to the date on which the administrator is requested to authorize the use of such material.
9 Speeches may, but need not, be filed with the administrator prior to use.~~

10 ~~(c) (b)~~ A copy of the proxy ~~statement and~~ statement, a copy of the form of proxy proxy, and all other solicitation
11 ~~material, material~~ in the form in which ~~such~~ that the material is furnished to ~~members, members~~ shall be filed with or
12 mailed for filing to the ~~administrator~~ Commissioner of Banks not later than the date ~~such~~ the material is first sent or given
13 to members. All materials filed pursuant to this Paragraph shall be accompanied by a statement of the date ~~on which~~ that
14 copies of ~~such~~ the materials are to be released to members.

15 ~~(d) If the solicitation is to be made in whole or in part by personal solicitation, a preliminary copy of all written
16 instructions or other material which discusses, reviews or comments upon the merits of any matter to be acted upon and
17 which is to be furnished to the individuals making the actual solicitation for their use directly or indirectly in connection
18 with the solicitation shall be filed with the administrator at least five business days prior to the date on which the
19 administrator is requested to authorize the use of such material.~~

20 ~~(e) (c)~~ All preliminary copies of material filed pursuant to Paragraphs ~~(a), (b), and (d)~~ Paragraph (a) of this Rule shall be
21 clearly marked on the cover page "Preliminary Copy." ~~Such preliminary Preliminary~~ copies shall be for the information
22 of the ~~administrator~~ Commissioner of Banks only only, and shall not be deemed available for public inspection except
23 that such [the] material may be disclosed to any department or agency of the United States, this State, or any other state,
24 that has concurrent jurisdiction over the applicant. The administrator may make such inquiries or investigation in regard
25 to the material as may be necessary for an adequate review.

26 ~~(f) (d)~~ Unless requested by the ~~administrator,~~ Commissioner of Banks, copies of replies to inquiries from members and
27 copies of communications ~~which~~ that do no more than request that forms of proxy ~~thereof~~ thereof solicited be signed and
28 returned need shall not be filed pursuant to this Rule.

29 ~~(g) (e)~~ Where any proxy statement, form of proxy proxy, or other material filed pursuant to this Rule is amended or
30 revised, a copy of ~~such~~ the amended or revised material filed with the ~~administrator~~ Commissioner of Banks shall be
31 marked to indicate ~~clearly and precisely the~~ all changes effected subsequent to the previous ~~filing,~~ filing, prior to use of
32 the amended or revised material.

33
34 *History Note:* Authority G.S. 54C-33; 54C-53;
35 Eff. February 15, 1992;
36 Amended Eff. November 1, 2017; April 15, 1993.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0515 is amended with changes as published in 31:23 2298 as follows:

2

3 **04 NCAC 16G .0515 FALSE OR MISLEADING STATEMENTS**

4 (a) ~~No~~ Any solicitation of a proxy by the applicant, its management, or any other person for the meeting to vote on the
5 plan of conversion by the applicant, its management, or any other person shall not contain ~~be made by means of any~~
6 proxy statement, form of proxy, notice of meeting, or other communication, written or oral, oral statements, including
7 misleading statements by intentional omission or by misstatement, containing any statement which, [language, which] at
8 the time and in the light of the circumstances under which that it when made is made, is false or misleading with respect
9 to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false
10 or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a
11 proxy for the meeting which has become false or misleading. fact of the conversion.

12 (b) The fact that a proxy statement, form of proxy, or other solicitation material has been filed with or examined by the
13 ~~administrator~~ Commissioner of Banks and authorized for use shall not be ~~deemed~~ a finding by the ~~Administrator~~
14 Commissioner of Banks that ~~such the~~ material is accurate or complete or complete, not false or misleading, or that the
15 ~~administrator~~ Commissioner of Banks has passed upon the merits of or approved any proposal contained therein. No
16 representation to the contrary shall be made by any person.

17 (c) If a solicitation by management or the applicant violates any provision of this Rule, the ~~administrator~~ Commissioner
18 of Banks may require remedial ~~measures~~ measures, including:

- 19 (1) correction of any such violation by means of a retraction and new solicitation, solicitation;
- 20 (2) rescheduling of the meeting for a vote on the plan of conversion, conversion; and or
- 21 (3) any other actions ~~the administrator may deem~~ that are appropriate under the circumstances in order to
22 ensure a fair vote.

23

24 *History Note:* Authority G.S. 54C-33; 54C-53;

25 *Eff. February 15, 1992; 1992;*

26 *Amended Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0712 is amended with changes as published in 31:23 2299 as follows:

2

3 **04 NCAC 16G .0712 GENERAL**

4 (a) No offer to sell securities of an applicant pursuant to a plan of conversion may be **made** prior to approval by the
5 ~~administrator until the Commissioner of Banks of has approved the plan of conversion and until the proxy statement has~~
6 ~~been authorized for use by the administrator. and authorized the use of the proxy statement.~~ No sale of securities may be
7 made except by means of a final offering circular ~~which that~~ meets the requirements of this Section and ~~which that~~ has
8 been ~~declared effective~~ approved by the ~~administrator.~~ Commissioner of Banks. **The provisions of this** This Rule shall
9 not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters
10 who are to be in privity of contract with the applicant.

11 (b) ~~If the financial statements in a filing are in excess of 135 days prior to the date of the administrator's approval of the~~
12 ~~plan of conversion, an interim financial statement as of a date within 135 days of such approval shall be furnished. This~~
13 ~~interim financial statement shall be at least as current as the most recent quarterly financial statement filed with the~~
14 ~~administrator. This interim financial statement may be unaudited.~~

15

16 *History Note: Authority G.S. 54C-33; 54C-53;*

17 *Eff. February 15, ~~1992.~~ 1992;*

18 *Amended Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0715 is amended with changes as published in 31:23 2299 as follows:

2

3 **04 NCAC 16G .0715 PROHIBITED REPRESENTATIONS**

4 ~~The administrator will review the price information required under this Section in determining whether to~~
5 ~~give approval to the plan of conversion when the offering is to commence prior to the meeting of the~~
6 ~~members, and the administrator will review the information in determining whether to declare a final offering~~
7 ~~circular effective.~~ No representations ~~may~~ shall be made in any manner that the price information has been
8 approved by the ~~administrator or~~ Commissioner of Banks, that the shares of capital stock sold pursuant to the
9 plan of conversion have been approved or disapproved by the ~~administrator~~ Commissioner of **[Banks] Banks.**
10 or that the ~~administrator~~ Commissioner of Banks has ~~passed upon~~ opined on the accuracy or adequacy of any
11 offering circular covering ~~such~~ the shares.

12

13 *History Note: Authority G.S. 54C-33; 54C-53;*

14 *Eff. February 15, 1992. 1992;*

15 *Amended Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0717 is amended with changes as published in 31:23 2300 as follows:

2

3 **04 NCAC 16G .0717 PRICING MATERIALS**

4 (a) In considering the pricing ~~information required under Rule .0714 of this Section, information~~, the ~~administrator~~
5 Commissioner of Banks ~~will~~ shall apply the following guidelines:

6 (1) ~~The the~~ materials shall be prepared by persons independent of the applicant who are experienced and
7 expert in the area of corporate ~~appraisal. appraisal~~;

8 (2) ~~The the~~ materials shall contain a brief summary of data that is sufficient to support the conclusions
9 reached ~~therein. therein;~~ and

10 (3) ~~To to~~ the extent that the appraisal is based on the capitalization of the pro forma income of the converted
11 savings bank, the materials ~~must~~ shall indicate the basis for determination of the income to be derived
12 from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings multiple used,
13 including assumptions made as to future earnings growth. To the extent that the appraisal is based on a
14 comparison of the capital stock of the applicant with the outstanding capital stock of existing stock
15 savings banks, the existing stock savings banks ~~must~~ shall be ~~reasonably~~ comparable to the applicant in
16 terms of such factors as size, market area, competitive conditions, profit history, and expected future
17 earnings.

18 (b) In addition to the information required in Paragraph (a) of this Rule, the applicant shall submit information
19 demonstrating to ~~the satisfaction of the administrator~~ Commissioner of Banks the independence and expertise of any
20 person preparing materials under this ~~Rule~~ Rule. ~~and the person must be acceptable in these respects to the~~
21 ~~administrator~~. A person ~~will~~ shall not be considered as lacking independence for the reason that ~~such the~~ person will
22 participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for
23 services rendered in connection with ~~such the~~ appraisal.

24 ~~(c) In addition to the information required in Paragraphs (a) and (b) of this Rule, the applicant shall file with the~~
25 ~~administrator such Commissioner of Banks additional information with respect to the pricing of the capital stock of the~~
26 ~~applicant as the administrator Commissioner of Banks may request, including, without limitation, a full appraisal.~~

27

28 *History Note: Authority G.S. 54C-33; 54C-53;*

29 *Eff. February 15, 1992, 1992;*

30 *Amended Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0718 is amended with changes as published in 31:23 2300 as follows:

2

3 **04 NCAC 16G .0718 ORDER FORMS FOR PURCHASE OF CAPITAL STOCK**

4 (a) ~~Promptly after~~ After the ~~administrator~~ Commissioner of Banks has ~~declared effective~~ authorized the offering circular
5 for the subscription offering, the applicant shall distribute order forms for the purchase of shares of capital stock in the
6 offering to all eligible account holders, supplemental eligible account holders (if applicable), voting ~~members~~ members,
7 and other persons who may subscribe for ~~such~~ shares of capital stock under the plan of conversion. If the applicant has
8 adopted in its plan of conversion the optional provisions set forth in ~~Paragraphs~~ Items (4), (5) or (10) of Rule .0312 of
9 this Subchapter, the applicant shall deliver order forms to the eligible account holders, supplemental eligible account
10 ~~holders~~ holders, and voting members who requested receipt of the offering circular.

11 (b) Each order form shall be accompanied or preceded by the final offering circular for the subscription offering or the
12 public ~~offering, as the case may be,~~ offering and a set of detailed instructions explaining how to ~~properly~~ complete the
13 order forms. The offering circular and order form instructions may be included in the same document.

14 (c) The maximum subscription price stated on each order form shall be the amount to be paid when the order form is
15 returned. The maximum subscription price and the actual subscription price shall be within the subscription price range
16 stated in the ~~administrator's approval and the offering circular.~~ offering circular approved by the Commissioner of Banks.
17 If either the maximum subscription price or the actual subscription price is not within ~~such~~ the approved subscription
18 price range, the applicant ~~must~~ shall obtain the written consent of the ~~administrator.~~ Commissioner of Banks for the
19 change in price. ~~If appropriate, the administrator~~ Based on the magnitude of the difference the Commissioner of Banks
20 will may condition the amended approval by requiring a resolicitation of ~~proxies or proxies,~~ order forms forms, or both.
21 If the actual public offering price is less than the maximum subscription price stated on the order form, the actual
22 subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the
23 maximum subscription ~~price,~~ price unless the subscribers affirmatively elect to have the difference applied to the
24 purchase of additional shares of capital stock.

25 (d) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear, and intelligible a
26 manner as possible, the actions ~~which~~ that are required or available to him or her with respect to the form and the capital
27 stock offered for purchase thereby. ~~Specifically, each~~ Each order form shall:

- 28 (1) indicate the maximum number of shares ~~which~~ that may be purchased pursuant to the subscription
29 offering;
- 30 (2) indicate the period of time ~~within which~~ that the subscription rights must be exercised, which ~~period of~~
31 ~~time~~ shall not be less than 20 days and no more than 45 days following the date of the mailing of the
32 subscription offering order form;
- 33 (3) state the maximum subscription price per share of capital stock;
- 34 (4) indicate any requirements as to the minimum number of shares of capital stock ~~which~~ that must be
35 purchased;
- 36 (5) provide a ~~specifically~~ designated blank space or spaces for indicating the number of shares of capital
37 stock ~~which~~ that the eligible account holder or other person wishes to purchase;

- 1 (6) indicate the manner of required payment and, if ~~such the~~ payment may be made by withdrawal from a
2 certificate of deposit, indicate that ~~such the~~ withdrawal ~~may [can]~~ be made without penalty. If payment
3 is to be made by a withdrawal from a deposit account or certificate of deposit, a box to check shall be
4 provided;
- 5 (7) provide ~~specifically~~ designated blank spaces for dating and signing the order form;
- 6 (8) contain an acknowledgement by the account holder or other person signing the order form that the
7 person has received the final offering circular for the subscription offering prior to signing the order
8 form; and
- 9 (9) indicate the consequences of failing to ~~properly~~ complete and return the order form, including a
10 statement ~~that to which~~ the subscription rights are nontransferable and ~~will shall~~ become void at the end
11 of the subscription period. The order form may, and the set of instructions shall, indicate the place or
12 places ~~to which that~~ the order forms are to be returned and when the order forms shall be deemed to be
13 received.

14 (e) The order form may provide that it ~~may shall~~ not be modified without the applicant's consent after the order form has
15 been returned to the applicant. If payment is to be made by withdrawal from a deposit account or certificate of deposit,
16 the applicant ~~may, may but need not,~~ cause ~~such the~~ withdrawal to be made upon receipt of the order form. If ~~such the~~
17 withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the
18 account holder on the amount withdrawn as if ~~such the~~ amount had remained in the account from which it was withdrawn
19 until the closing date.

20
21 *History Note:* Authority G.S. 54C-33; 54C-53;
22 Eff. February 15, 1992; 1992;
23 Amended Eff. November 1, 2017.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16G .0720 is amended as published in 31:23 2301 as follows:

2

3 **04 NCAC 16G .0720 PERIOD FOR COMPLETION OF SALE**

4 ~~The sale of all shares of capital stock of the applicant to be made under the plan of conversion, including any sale in a~~
5 ~~public offering or direct community marketing, shall be completed as promptly as possible. The applicant shall obtain the~~
6 ~~prior written approval of the administrator to sell shares of stock more than 45 days after the last day of the subscription~~
7 ~~period.~~ complete all sales of stock within 45 days after the last day of the subscription period, unless the time period is
8 extended as provided in Rule .0722 of this Section.

9

10 *History Note: Authority G.S. 54C-33; 54C-53;*

11 *Eff. February 15, ~~1992~~ 1992;*

12 *Amended Eff. November 1, 2017.*

Permanent Amendment for Publication in the NCAC

04 NCAC 16G .0823 is amended with changes as published in 31:23 2302 as follows:

04 NCAC 16G .0823 ADDITIONAL FILING REQUIREMENTS

An applicant whose plan of conversion has been approved by the ~~administrator~~ Commissioner of Banks shall fulfill the following requirements:

- (1) ~~The applicant shall file with the administrator promptly after the meeting of members called to consider the plan of conversion.~~ After the meeting of members called to consider the plan of conversion, the applicant shall file with the Commissioner of Banks a certified copy of each resolution adopted at the meeting relating to the plan of conversion, together with the following information:
 - (a) the total number of votes eligible to be ~~cast,~~ cast;
 - (b) the total number of votes represented in person or by proxy at the ~~meeting,~~ meeting;
 - (c) the total number of votes cast in favor of and against each ~~such matter,~~ matter; and
 - (d) the percentage of votes necessary to approve each ~~such~~ such matter.

The compilation of the votes cast at the meeting may be prepared by an independent public accountant or by an independent transfer agent.

- (2) ~~The applicant shall file with the administrator promptly after the meeting of members called to consider the plan of conversion.~~ After the meeting of members called to consider the plan of conversion, the applicant shall file with the Commissioner of Banks an opinion of counsel to the effect that:
 - (a) the meeting of members was duly held in accordance with all requirements of applicable ~~state~~ State and federal law and regulation;
 - (b) all requirements of ~~state~~ State and federal law applicable to the conversion have been complied with; and
 - (c) if the savings bank has used proxies executed prior to the proxy solicitation required by Rule .0511 of this Subchapter, the authority conferred by such proxies includes authority to vote on this plan of conversion.

- (3) ~~Each offering circular for the offering shall be prepared in compliance with this Subchapter. The applicant shall file with the administrator [Commissioner of Banks] a copy of each preliminary offering circular and a copy of each final offering circular.~~

History Note: Authority G.S. 54C-33; 54C-53;
Eff. February 15, ~~1992.~~ 1992;
Amended Eff. November 1, 2017.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16H .0101 is amended with changes as published in 31:23 2302 as follows:

2

3 04 NCAC 16H .0101 DEFINITIONS

4 As used in this Subchapter, unless the context otherwise requires, the term: the words and phrases defined by G.S. 54C-4
5 and the following definitions apply:

6 (1) "Savings institution" ~~means~~ shall mean all savings institutions converting, ~~merging~~ merging, or
7 consolidating pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.

8 (2) "Consolidation" ~~means~~ shall mean a supervisory acquisition pursuant to G.S. 54B-44 or G.S. 54C-45
9 and this Subchapter.

10 (3) "Merger" ~~means~~ shall mean a supervisory merger pursuant to G.S. 54B-44 or G.S. 54C-45 and this
11 Subchapter.

12 ~~(4) "Plan of conversion" means [shall mean] a detailed outline of the terms, conditions and procedure of~~
13 ~~the short form conversion of a savings institution from mutual to stock form of ownership.~~

14 ~~(5)~~ (4) "Plan of merger" or "plan of consolidation" ~~means~~ shall mean a detailed outline of the terms, ~~conditions~~
15 conditions, and procedure of combining one savings institution, by merger or consolidation, with
16 another savings institution.

17 ~~(6)~~ (5) "Short form conversion" ~~means~~ shall mean a supervisory conversion of a savings institution from
18 mutual to stock form of ownership, pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.

19 ~~(7)~~ (6) "Combination merger and conversion" ~~means~~ shall mean a supervisory conversion of a savings
20 institution from mutual to stock form of ownership combined with a supervisory merger, pursuant to
21 G.S. 54B-44 or G.S. 54C-45 and this Subchapter.

22 ~~(8)~~ (7) "Plan of combination merger and conversion" ~~means~~ shall mean a detailed outline of the terms,
23 ~~conditions~~ conditions, and procedures of the short form conversion of a savings institution from mutual
24 to stock form of ownership and combining the savings institution, by merger, with another savings
25 institution.

26

27 *History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31,*
28 *1992;*

29 *Statutory Authority G.S. 54B-44; 54C-45;*

30 *Eff. December 1, 1981;*

31 *Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990; October 1, 1982.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16H .0103 is amended with changes as published in 31:23 2303 as follows:

2

3 **04 NCAC 16H .0103 NOTICE TO SAVINGS INSTITUTION**

4 The ~~Administrator~~ Commissioner of Banks shall give written notice to the Board of Directors of a savings institution ~~as~~
5 ~~to which~~ when a finding is made pursuant to G.S. 54B-44 or G.S. 54C-45. ~~Such~~ The notice shall set forth the basis for
6 ~~such~~ the finding and shall authorize or require the ~~Board of Directors~~ board of directors to adopt a plan of conversion, a
7 plan of merger or consolidation, a plan of combination merger and ~~conversion with another savings institution~~
8 conversion, or based upon the interest of the depositors, the institution, and the general public, any other action specified
9 by the ~~Administrator~~ Commissioner of Banks. The ~~Administrator~~ Commissioner of Banks may specify provisions ~~which~~
10 that shall be included in the plan.

11

12 *History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on*
13 *March 31, 1992;*

14 *Statutory Authority G.S. 54B-44; 54C-45;*

15 *Eff. December 1, 1981;*

16 *Amended Eff. November 1, 2017; February 15, 1992; November 1, 1985; October 1, 1982.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16H .0104 is amended with changes as published in 31:23 2303 as follows:

2

3 **04 NCAC 16H .0104 ADOPTION OF PLAN**

4 Within such time as the Administrator The [Commissioner of Banks] shall specify, the Board of Directors board of
5 directors shall adopt a plan of conversion, merger, consolidation, combination merger and ~~conversion~~ conversion, or any
6 other action as authorized or required by the ~~Administrator.~~ Commissioner of Banks. A plan of conversion, merger,
7 consolidation, combination merger and ~~conversion~~ conversion, or any other action adopted pursuant to this Rule shall be
8 submitted to the ~~Administrator~~ Commissioner of Banks for ~~his~~ approval.

9

10 *History Note: Authority G.S. 54B-44; 54C-45;*

11 *Eff. December 1, 1981;*

12 *Amended Eff. November 1, 2017; November 1, 1985; October 1, 1982.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16H .0105 is amended with changes as published in 31:23 2303 as follows:

2

3 **04 NCAC 16H .0105 APPROVAL BY ~~ADMINISTRATOR~~ COMMISSIONER OF BANKS**

4 The savings institution shall submit to the ~~Administrator~~ Commissioner of Banks for his review an executed copy of the
5 savings institution's proposed articles of incorporation, articles of merger or ~~consolidation~~ consolidation, or evidence of
6 such other ~~action as the Administrator~~ [Commissioner of Banks] deems appropriate. action. Upon finding that all
7 requirements of the short form conversion, merger, consolidation, combination merger and ~~conversion~~ conversion, or
8 other action have been satisfied, the ~~Administrator~~ Commissioner of Banks shall certify to the Secretary of State that ~~he~~
9 ~~has approved~~ the certificate of incorporation, articles of merger or ~~consolidation~~ consolidation, or evidence of other
10 action has been approved for filing in the Office of the Secretary of State.

11

12 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on
13 March 31, 1992;

14 Statutory Authority G.S. 54B-44; 54C-45;

15 Eff. December 1, 1981;

16 Amended Eff. November 1, 2017; February 15, 1992; November 1, 1985; October 1, 1982.

Permanent Amendment for Publication in the NCAC

04 NCAC 16I .0702 is amended with changes as published in 31:23 2303 as follows:

04 NCAC 16I .0702 DEFINITIONS AND OTHER TERMS

As used in this Subchapter, ~~unless the context otherwise requires, the term:~~ the words and phrases defined by G.S. 54C-4 and the following definitions apply:

- (1) "Acquisition" ~~means~~ shall mean a transaction in which a person or holding company acquires control of a stock savings institution by means of an exchange of its capital stock for the capital stock of the stock savings ~~institution,~~ institution or by means of a purchase of the capital stock of the stock savings institution.
- (2) "Applicant" ~~means~~ shall mean a person or holding company ~~which that~~ has filed with the ~~Administrator~~ Commissioner of Banks ~~any an~~ application ~~under~~ pursuant to this Subchapter.
- ~~(3)~~ "Control" ~~means the power, directly or indirectly, to direct the management or policies of a savings institution or to vote 25 percent or more of any class of voting securities for a savings institution.~~
- ~~(3)~~ "Holding Company" means any company which that directly or indirectly controls a savings institution or controls any other company which that is a holding company of a savings institution.
- ~~(4)~~ ~~(3)~~ "Person" ~~includes~~ shall mean an individual or group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization similar company, or a syndicate.
- ~~(5)~~ "Plan of Conversion" ~~means a plan duly adopted in accordance with the requirements of G.S. 54B-261 or G.S. 54C-195 and this Subchapter that, to the satisfaction of the Administrator, sets out all relevant terms and conditions pertaining to a mutual savings institution's conversion to ownership by a holding company.~~
- ~~(6)~~ ~~(4)~~ ~~(5)~~ "Plan of Reorganization" ~~means~~ shall mean a plan duly adopted in accordance with the requirements of G.S. 54B-261 or 54C-195 and this Subchapter ~~that, that~~ to the satisfaction of the Administrator, ~~[Commissioner of Banks,]~~ sets out all relevant terms and conditions pertaining to a stock savings institution's reorganization of its ownership to provide for a holding company.
- ~~(7)~~ ~~(5)~~ ~~(6)~~ "Registrant" ~~means~~ shall mean any holding company ~~which that~~ has filed a registration statement with the ~~Administrator~~ Commissioner of Banks ~~under~~ pursuant to this Subchapter.
- ~~(8)~~ ~~(6)~~ "Holding Company" means any company which [that] directly or indirectly controls a savings institution or controls any other company which [that] is a holding company of a savings institution.
- ~~(9)~~ ~~(7)~~ "Tax Free Exchange" ~~means~~ shall mean an exchange of stock ~~which that~~ would result in no tax consequences to the holding company, the stock savings ~~institution~~ institution, and its stockholders under ~~state~~ State or federal law.

History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;

- 1 *Eff. July 1, 1983;*
- 2 *Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990; November 1, 1985.*

Permanent Amendment for Publication in the NCAC

04 NCAC 16I .0703 is amended with changes as published in 31:23 2304 as follows:

04 NCAC 16I .0703 STANDARDS FOR APPROVAL OF ACQUISITION: DUTIES AND CONDUCT

~~(a) A savings institution may be controlled by a person or a holding company. The Administrator In evaluating an application for control, the Commissioner of Banks shall determine that the person or savings and loan holding company is qualified by character, experience, and financial responsibility to control the savings institution in a legal and responsible manner. The Administrator shall consider the applicant's financial and managerial resources, and the organizational structure and future prospects and plans of both the applicant and the savings institution. The Administrator will consider whether the business and activities of the applicant, or its officers and directors; or any other person controlling, controlled by, or associated with the applicant by having a common controller, would create a material deterioration of confidence in the safety, soundness, and financial integrity of the proposed to be controlled. consider:~~

- (1) Whether whether the person or holding company is qualified by character, experience, and financial responsibility to control the savings institution in a legal and responsible manner;
- (2) the applicant's financial and managerial resources;
- (3) the organizational structure and future prospects and plans of both the applicant and the savings institution; and
- (4) whether the business and activities of the applicant, or its officers and directors, or any other person controlling, controlled by, or associated with the applicant by having a common controller, would create a material deterioration of confidence in the safety, soundness, and financial integrity of the institution to be controlled.

~~When reference is made to the word "control" in this Rule, the word "control" has the meaning given in G.S. 54B-4 or G.S. 54C-4, and additionally shall have the meaning given by any other law or regulation under which the applicant is required to report and register as a holding company, parent corporation, or other similar entity.~~

~~(b) An applicant shall be solvent, and shall have a debt to equity ratio which meets or exceeds the average of the ratios of other persons in the same line of business.~~

~~(c) The approval of an application to acquire control of a savings institution shall in no way diminish the authority of the Administrator to regulate the activities of the controlled savings institution.~~

~~(d) A controlled savings institution shall obtain the prior written approval of the administrator to lend to, or invest in, its holding company or its affiliates.~~

History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on

March 31, 1992;

Statutory Authority G.S. 53-227.1; 54B-43; 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;

Eff. July 1, 1983;

Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990; November 1, 1985.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16I .0801 is amended with changes as published in 31:23 2304 as follows:

2

3 **04 NCAC 16I .0801 PRIOR WRITTEN APPROVAL REQUIRED FOR ACQUISITIONS**

4 ~~(a)~~ A person or holding company shall not acquire control of any savings institution without having filed with the
5 ~~Administrator~~ Commissioner of Banks an ~~Acquisition Application~~ application as prescribed by the ~~Administrator,~~
6 [Commissioner of Banks,] and without the written approval of the ~~Administrator~~ Commissioner of Banks after
7 consideration of the application and any ~~amendments thereto.~~ amendments. The application shall contain identifying
8 information for the applicant and the information set forth in the Interagency Notice of Change in Bank Control. The
9 Interagency Notice of Change in Bank Control is hereby incorporated by reference, including subsequent amendments or
10 editions, and may be found free of charge as follows: <https://www.fdic.gov/formsdocuments/interag2.pdf>

11 ~~(b) In addition to the filing of the Acquisition Application, the applicant shall file any other information requested by~~
12 ~~the Administrator, including copies of any filings, documents or reports mentioned in Rule .1105 of this Subchapter.~~

13

14 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on
15 March 31, 1992;

16 Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;

17 Eff. July 1, 1983;

18 Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16I .0802 is amended with changes as published in 31:23 2305 as follows:

2

3 **04 NCAC 16I .0802 APPLICATION FEES: FILINGS**

4 An ~~Acquisition Application~~ application may be obtained from the ~~Division~~ Office of the Commissioner of Banks at its
5 mailing address specified in 04 NCAC 03A .0101. Applications shall be accompanied by an application fee in the
6 amount prescribed by the fee schedule specified in [04 NCAC 03C .1601.] 04 NCAC 03C .1601(a)(4). ~~Such~~ The fee will
7 ~~be paid by check and is~~ shall be non-refundable.

8

9 *History Note: Authority G.S. 54B-55; 54B-57; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;*

10 *Eff. July 1, 1983;*

11 *Amended Eff. November 1, 2017; July 1, 1990; August 1, 1984.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16I .0803 is amended with changes as published in 31:23 2305 as follows:

2

3 **04 NCAC 16I .0803 CONFIDENTIAL INFORMATION**

4 ~~Should an~~ An applicant ~~desire to submit any~~ that submits information ~~may request that the information~~ it deems to be of a
5 confidential ~~nature~~ regarding the answer to any item or a part of an exhibit included in any application for filing ~~under~~
6 pursuant to this Subchapter, such ~~[the]~~ information pertaining to such item or exhibit ~~[items or exhibits]~~ shall be by
7 separately binding and labeling the information as ~~bound and labeled~~ "confidential", "confidential" and a statement shall
8 be submitted ~~therewith~~ briefly setting forth the grounds on which such ~~[reasons that]~~ the information should be treated as
9 ~~confidential.~~ confidential pursuant to G.S. 54B-63, 54B-63.1. or 54C-60. ~~Only general reference thereto need be made in~~
10 ~~that portion of the application which the applicant deems not to be confidential.~~ Applications for filings Filings ~~under~~
11 pursuant to this Subchapter shall be made available for inspection by the public, except for portions ~~which that~~ are bound
12 and labeled "confidential" and ~~which that~~ the ~~Administrator~~ Commissioner of Banks determines to be withhold from
13 public availability because of their confidential ~~nature~~ under pursuant to the provisions of G.S. ~~54B-63~~ 54B-63, 54B-
14 63.1, or 54C-60 ~~unless the Administrator~~ [Commissioner of Banks] is compelled to release the information pursuant to
15 ~~54B-63~~ [54B-63, 54B-63.1,] or 54C-60.

16

17 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on

18 March 31, 1992;

19 Statutory Authority G.S. 54B-55; 54B-63; 54B-63.1; 54B-261; 54B-262; 54C-53; 54C-60; 54C-195;

20 54C-196;

21 Eff. July 1, 1983;

22 Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16I .0901 is amended with changes as published in 31:23 2305 as follows:

2

3 **04 NCAC 16I .0901 REQUIRED ACQUISITION APPLICATION**

4 A stock savings institution may be controlled by a holding company by means of a plan of reorganization. ~~This may be~~
5 ~~accomplished by filing with the Administrator~~ An applicant shall file one manually signed executed copy of an
6 ~~Acquisition Application.~~ [Application] application with the Commissioner of Banks. For the purposes of filing the
7 application, the applicant shall be considered a holding company, even though it may not yet control a stock savings
8 institution.

9

10 *History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on*
11 *March 31, 1992;*
12 *Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;*
13 *Eff. July 1, 1983;*
14 *Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16I .0902 is amended with changes as published in 31:23 2305 as follows:

2

3 **04 NCAC 16I .0902 ACQUISITION PROCEDURE**

4 (a) Upon determining that an ~~Acquisition Application~~ application is properly executed and is not materially incomplete,
5 the ~~Administrator~~ Commissioner of Banks shall ~~consider the application filed.~~ process the application. The application
6 shall include a Plan of ~~[Reorganization]~~ Reorganization. If the Plan of Reorganization is not approved, the ~~Administrator~~
7 Commissioner of Banks shall notify the applicant ~~of such,~~ and state the reasons for its disapproval. ~~The Administrator~~
8 ~~may include advice to the applicant as to what may be required by way of amendment or other requirement to cause~~
9 ~~approval of the Plan of Reorganization.~~

10 (b) If the ~~Administrator~~ Commissioner of Banks approves the Plan of Reorganization, the ~~applicant shall be notified.~~
11 Commissioner shall notify the applicant. ~~Thereafter, a~~ A regular or special meeting of the stockholders of the subject
12 savings institution shall be called to approve reorganization of ownership of the savings institution to provide for
13 ownership by a holding company after advance written notice to the stockholders of not less than 20 days specifying the
14 time, place, and purpose for ~~calling of the meeting.~~ Notice shall be published in at least one newspaper of general
15 circulation in each county where the savings institution has an office. After publication of the notice, the applicant shall
16 file a copy of the notice with the Commissioner of Banks. The applicant shall file the publisher's affidavits with the
17 ~~Administrator~~ Commissioner of Banks to confirm the publication of notice.

18 (c) The results of the stockholder's meeting shall be confirmed to the ~~Administrator~~ Commissioner of Banks by filing
19 attested minutes of the meeting. If the stockholders approve reorganization of ownership of the savings institution to
20 provide for ownership by a holding company, the ~~Administrator~~ Commissioner of Banks shall enter ~~his~~ a final order
21 approving the reorganization.

22 (d) The ~~Administrator~~ Commissioner of Banks may waive or alter any requirements set forth in this Rule upon a finding
23 that compliance would work an undue financial hardship on the applicant, would adversely affect the ~~safe and sound~~
24 operation of the applicant, or would have an unintended negative impact upon the public or the applicant.

25

26 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on
27 March 31, 1992;

28 *Statutory Authority* G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;

29 *Eff.* July 1, 1983;

30 *Amended Eff.* November 1, 2017; February 15, 1992; July 1, 1990.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16I .1002 is amended with changes as published in 31:23 2305 as follows:

2

3 **04 NCAC 16I .1002 FOREIGN APPLICANTS**

4 (a) If the applicant is a corporation for profit or having a capital stock, but not created under any general or special act of
5 the State of North Carolina, then that corporation shall procure a Certificate of Authority from the Secretary of State
6 under the provisions of Article 15 of Chapter 55 of the North Carolina General Statutes, Statutes before it shall be
7 approved by the ~~Administrator~~ Commissioner of Banks to obtain control of a stock savings institution. The applicant
8 shall file a copy of the Certificate of Authority from the Secretary of State ~~to~~ as evidence ~~this~~ of compliance. ~~If the~~
9 ~~applicant foreign corporation has been certified to conduct business in this State under some provision of law of this~~
10 ~~State other than Chapter 55 of the General Statutes, then evidence of that certification shall be filed with the~~
11 ~~Administrator for his review and approval to meet the requirements of this Rule.~~

12 (b) ~~If the applicant is a person other than a corporation, and not a resident of this State, then the applicant shall by a duly~~
13 ~~executed instrument filed with the Administrator, constitute as its true and lawful attorney the Secretary of State and his~~
14 ~~successors in office, or some other competent resident of this State, upon whom all original process in any action or legal~~
15 ~~proceedings against it may be served, and therein shall agree that any original process against it which may be served~~
16 ~~upon the Secretary of State or other competent person, shall be of the same force and validity as if served on the person,~~
17 ~~and the authority thereof shall continue in force irrevocable so long as the person continues to control a state savings~~
18 ~~institution.~~

19

20 *History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on*

21 *March 31, 1992;*

22 *Statutory Authority G.S. 54B-55; 54C-53; 54C-195; 54C-196;*

23 *Eff. July 1, 1983;*

24 *Amended Eff. November 1, 2017; February 15, 1992; September 1, 1983.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16I .1003 is amended with changes as published in 31:23 2306 as follows:

2

3 **04 NCAC 16I .1003 ACQUISITION PROCEDURE**

4 (a) Upon determining that an ~~Acquisition Application~~ application is properly executed and ~~is not materially incomplete,~~
5 ~~complete,~~ the ~~Administrator~~ Commissioner of Banks shall ~~consider its approval,~~ process the application. If the
6 application is not approved, the ~~Administrator~~ Commissioner of Banks ~~will~~ shall notify the applicant ~~of such,~~ and state
7 the reasons for its disapproval. ~~The Administrator may include advice to the applicant as to what may be required by~~
8 ~~way of amendment or other requirement, to cause approval of the application.~~

9 (b) If the ~~Administrator~~ Commissioner of Banks approves the application, the applicant shall be notified. ~~Such notice~~
10 ~~Notice~~ The notice shall include any requirements or stipulations the ~~Administrator~~ Commissioner of Banks may ~~make as~~
11 ~~conditions of approval,~~ require prior to the applicant's execution of the acquisition.

12

13 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on
14 March 31, 1992;

15 *Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;*

16 *Eff. July 1, 1983;*

17 *Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990; June 1, 1988.*

Permanent Repeal for Publication in the NCAC

1 04 NCAC 16I .1101 is repealed with changes as published in 31:23 NCR 2306 as follows:

2

3 **04 NCAC 16I .1101 REGISTRATION**

4

5 *History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on*

6

March 31, 1992;

7

Authority G.S. ~~[53-227-]~~ 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;

8

Eff. July 1, 1983;

9

Amended Eff. February 15, 1992; July 1, 1990; November 1, 1985.

10

Repealed Eff. November 1, 2017.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16I .1102 is amended with changes as published in 31:23 2306 as follows:

2

3 **04 NCAC 16I .1102 SUPERVISION**

4 (a) Officers, directors, and employees of holding companies have the same duties and responsibilities, express or
5 implied, as officers, directors, and employees of savings institutions.

6 (b) Each registrant holding company shall be subject to ~~such examinations~~ examination by the Office of
7 the Commissioner of Banks, ~~as the Administrator may prescribe~~. The cost of ~~such examinations~~ examination shall be
8 ~~assessed against and paid by such the~~ registrant holding company.

9

10 *History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on*
11 *March 31, 1992;*
12 *Statutory Authority G.S. 54B-55; 54B-57; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;*
13 *Eff. July 1, 1983;*
14 *Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990; November 1, 1985.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16I .1104 is amended with changes as published in 31:23 2306 as follows:

2

3 **04 NCAC 16I .1104 FILING AND APPROVAL: AMENDMENTS TO ARTICLES AND BYLAWS**

4 (a) Prior to any filing with the Secretary of State of the State of North Carolina, a holding company ~~will~~ shall file with
5 the ~~Administrator~~ Commissioner of Banks copies of any proposed amendment to its articles of incorporation. The
6 ~~Administrator~~ Commissioner of Banks must give his or her approval to the content and form of ~~such~~ the proposed
7 amendments.

8 (b) Before any amendments to the bylaws of a holding company ~~can~~ shall become effective, a ~~certified~~ copy of ~~such~~ the
9 amendments shall be filed with and approved by the ~~Administrator~~ Commissioner of Banks. ~~In the event of the failure~~
10 ~~of the Administrator to act upon the amendment within 25 days of receipt, the bylaws shall be deemed approved.~~

11

12 *History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;*

13 *Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;*

14 *Eff. July 1, 1983;*

15 *Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16I .1105 is amended with changes as published in 31:23 2306 as follows:

2

3 **04 NCAC 16I .1105 REPORTS**

4 ~~(a)~~ Each registrant shall file simultaneously with the ~~Administrator~~ Commissioner of Banks copies of any filings,
5 documents, ~~statements~~ statements, or reports required to be filed with the appropriate federal regulatory authority.

6 ~~(b)~~ Each registrant shall file with the Administrator such reports or other filings as the Administrator may prescribe, to
7 be made under oath or otherwise, and to be in such form and for such periods as the Administrator may prescribe. Each
8 such report or filing shall contain such information concerning the operations of the holding company, and any related
9 persons, as the Administrator may require.

10

11 *History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;*

12 *Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;*

13 *Eff. July 1, 1983;*

14 *Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16K .0101 is amended with changes as published in 31:23 2307 as follows:

2

3 **04 NCAC 16K .0101 DEFINITIONS**

4 For purposes of this Section:

- 5 (1) "Account" ~~means~~ shall mean the trust, ~~estate estate,~~ or other fiduciary relationship that has been
6 established with a savings institution.
- 7 (2) "Custodian Under the Uniform Transfers to Minors Act" ~~means~~ shall mean an account established
8 pursuant to the North Carolina Uniform Transfers to Minors Act ~~contained~~ codified in Chapter 33A of
9 the North Carolina General Statutes.
- 10 (3) "Fiduciary" ~~means~~ shall mean a savings institution undertaking to act alone or jointly with others for
11 the benefit of another in all matters connected with its undertaking and includes acting as trustee;
12 ~~executor; administrator; guardian; receiver; managing agent; registrar of stocks and bonds; escrow;~~
13 ~~transfer; or paying agent; trustee of employee pension; welfare and profit sharing trusts; trustee,~~
14 ~~executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow,~~
15 ~~transfer or paying agent, trustee of employee pension, welfare and profit sharing trusts,~~ and any other
16 similar capacity.
- 17 (4) "Fiduciary Records" ~~means~~ shall mean all matters that are written, transcribed, recorded, ~~received~~
18 received, or otherwise coming into the possession of a savings institution and are necessary to preserve
19 information concerning the actions and events relevant to the fiduciary activities of the savings
20 institution.
- 21 (5) "Guardian" ~~means~~ shall mean the guardian, ~~conservator,~~ conservator or committee of the estate of an
22 infant, an incompetent individual, or a competent individual over whose estate a court has taken
23 ~~jurisdiction,~~ jurisdiction other than under bankruptcy or insolvency laws.
- 24 (6) "Investment Authority" ~~means~~ shall mean the responsibility conferred by action of law or a provision
25 of an appropriate governing instrument to make, ~~select~~ select, or change investments, review
26 investment decisions made by others, or to provide investment advice or counsel to others.
- 27 (7) "Managing Agent" ~~means~~ shall mean the fiduciary relationship assumed by a savings institution upon
28 the creation of an account ~~which that~~ names the savings institution as agent and confers investment
29 discretion upon the savings institution.
- 30 (8) "Trust Department" ~~means~~ shall mean that group or groups of officers and employees of a savings
31 institution ~~to whom are assigned the performance~~ who perform ~~of~~ fiduciary services by the savings
32 institution.
- 33 (9) "Trust Powers" ~~means~~ shall mean the power to act in any fiduciary capacity authorized under this
34 Section.
- 35

36 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on
37 *March 31, 1992;*

1 *Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;*
2 *Eff. November 1, 1982;*
3 *Amended Eff. November 1, 2017; February 15, 1992.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16K .0102 is amended with changes as published in 31:23 2308 as follows:

2

3 **04 NCAC 16K .0102 APPLICATIONS**

4 (a) A savings institution desiring to exercise fiduciary powers shall file with submit to the ~~Administrator~~ Commissioner
5 of Banks an application a letter indicating which trust services it wishes to offer and ~~providing the information necessary~~
6 ~~to make the determinations under offer, together with the information required under~~ Paragraph (b) of this Rule.

7 (b) ~~In addition to any other facts or circumstances, the Administrator, The Commissioner of Banks, in passing upon~~
8 ~~determining whether to~~ [approve] an application to authorize the exercise of trust powers, ~~will~~ shall consider the
9 following:

10 (1) the financial condition of the savings institution, provided that in no event shall trust powers be granted
11 to a savings institution if its financial condition is such that the savings institution does not meet the
12 requirements of the appropriate federal regulatory authority;

13 (2) the general character and ability of the management of the savings institution;

14 (3) the nature of the supervision to be given to the fiduciary activities, including the qualifications,
15 ~~experience~~ experience, and character of the proposed officer or officers of the trust department; and

16 (4) whether the savings institution has available legal counsel to advise and ~~pass upon~~ review fiduciary
17 matters when necessary.

18 (c) Approval by the ~~Administrator~~ Commissioner of Banks of an application under this Section authorizes the applicant
19 to exercise only those trust powers specified in the approval. ~~Unless otherwise provided by the approval, fiduciary~~
20 ~~services based on those trust powers may be offered only in those offices listed in the application.~~

21

22 *History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31,*
23 *1992;*

24 *Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;*

25 *Eff. November 1, 1982;*

26 *Amended Eff. November 1, 2017; February 15, 1992.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16K .0103 is amended with changes as published in 31:23 2308 as follows:

2

3 **04 NCAC 16K .0103 CONSOLIDATION OR MERGER OF TWO OR MORE SAVINGS INSTITUTIONS**

4 When two or more savings institutions consolidate or merge, and any one of ~~such the~~ savings institutions ~~has,~~ prior to
5 ~~such the~~ consolidation or merger, ~~received approval from the Administrator to exercise trust powers which approval is in~~
6 ~~force at the time of the consolidation or merger,~~ has a [current and] valid approval [form] [from] the Commissioner of
7 Banks to exercise trust powers, the rights existing under ~~such the~~ approval shall pass to the resulting savings ~~institution~~
8 ~~as provided in G.S. 36A-37 for other corporate trustees.~~ institution.

9

10 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31,
11 1992;
12 Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;
13 Eff. November 1, 1982;
14 Amended Eff. November 1, 2017; February 15, 1992.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16K .0104 is amended with changes as published in 31:23 2308 as follows:

2

3 **04 NCAC 16K .0104 ADMINISTRATION OF TRUST POWERS**

4 (a) The ~~Board of Directors~~ board of directors ~~is shall be~~ responsible for the ~~proper~~ exercise of fiduciary powers by the
5 savings institution. All matters pertinent ~~thereto~~, including the determination of policies, the investment and disposition
6 of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and
7 committees utilized by the savings institution in the exercise of its fiduciary powers, ~~are shall be~~ the responsibility of the
8 ~~Board~~ board of directors. In discharging this responsibility, the ~~Board of Directors~~ board of directors may assign, by
9 action duly entered in the minutes, the administration of ~~such of~~ the savings institution's trust powers ~~as it may consider~~
10 ~~proper to assign~~, to ~~such~~ directors, officers, employees, or ~~committees as it may designate~~ committees.

11 (b) No fiduciary account shall be accepted without the prior approval of the ~~Board~~ or of the board of directors, officers,
12 or committees to whom the ~~Board~~ board of directors may have assigned the performance of that responsibility. A written
13 record shall be made of ~~such the~~ acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the
14 acceptance of an account for which the savings institution has investment responsibilities, a ~~prompt~~ review of the assets
15 shall be made. The ~~Board~~ board of directors shall also ensure that at least once during every calendar year ~~thereafter~~, and
16 within 15 months of the last review, all the assets in each fiduciary account ~~for over~~ which the savings institution has
17 investment responsibilities ~~are shall be~~ reviewed to determine the advisability of retaining or disposing of such assets.
18 The ~~Board of Directors~~ board of directors shall act to ensure that all investments have been made in accordance with the
19 terms and purposes of the governing instrument.

20 (c) The trust department may ~~utilize~~ use personnel and facilities of other departments of the savings institution, and other
21 departments of the savings institution may ~~utilize~~ use personnel and facilities of the trust department only to the extent
22 not prohibited by North Carolina law.

23 (d) Every savings institution exercising trust powers shall adopt written policies and procedures to ensure that the federal
24 securities laws are complied with in connection with any decision or recommendation to purchase or sell any security.
25 ~~Such~~ The policies and procedures, ~~in particular~~, shall ensure that the savings institution's trust department shall not use
26 material inside information in connection with any decision or recommendation to purchase or sell any security.

27 (e) Every savings institution exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be
28 ~~readily~~ available to ~~pass upon~~ review fiduciary matters and to advise the savings institution and its trust department.

29 (f) The directors, officers, and employees of a savings institution engaged in the operation of a trust department shall
30 acquire ~~such~~ additional bond coverage as the ~~Administrator~~ Commissioner of Banks may require.

31 g) The savings institution shall comply with rules applicable to State Trust Entities in 04 NCAC 03D and the FDIC
32 Statement of Principles on Trust Department Management, which is hereby incorporated by reference and shall include
33 any later amendments and editions of the referenced material available free of charge, at the time of publication, at:
34 <https://www.fdic.gov/news/news/inactivefinancial/1998/fi198100b.html>.

35

36 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on
37 *March 31, 1992;*

1 *Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;*
2 *Eff. November 1, 1982;*
3 *Amended Eff. December 1, 2017; February 15, 1992.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16K .0105 is amended with changes as published in 31:23 2308 as follows:

2

3 **04 NCAC 16K .0105 BOOKS AND ACCOUNTS**

4 (a) Every savings institution exercising trust powers shall keep its fiduciary records separate and distinct from other
5 records of the savings institution. All fiduciary records shall be retained in a manner and for such time as is necessary to
6 enable the savings institution to furnish any information or reports as may be required by the Administrator.

7 [Commissioner of Banks.] The fiduciary records shall contain full information relative to each account. The record
8 retention schedule set forth in ~~4 NCAC 16D .0302 and 4 NCAC 16E .0302~~ 04 NCAC 03D .0303 shall apply to the
9 fiduciary records of a savings institution exercising trust powers.

10 (b) Every savings institution shall keep ~~an adequate~~ a record of all pending litigation to which it is a party in connection
11 with its exercise of trust powers.

12

13 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on
14 March 31, 1992;

15 *Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;*

16 *Eff. November 1, 1982;*

17 *Amended Eff. November 1, 2017; February 15, 1992.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16K .0107 is amended with changes as published in 31:23 2309 as follows:

2

3 **04 NCAC 16K .0107 FUNDS AWAITING INVESTMENT OR DISTRIBUTION**

4 (a) ~~Funds~~ Unless prohibited by the instrument creating the trust, funds held in trust by a savings institution, including
5 managing agency accounts, awaiting investment or distribution ~~may, may~~ unless prohibited by the instrument creating the
6 ~~trust,~~ be deposited in other departments of the savings ~~institution, provided the~~ institution. The savings institution shall first
7 set aside under control of the trust department collateral security of a kind and in an amount as specified in ~~G.S. 36A-63(b)~~
8 GS G.S. 53-163.1(b) for funds held in trust by a bank, except that no ~~such~~ collateral shall be required to the extent that ~~such~~
9 the funds are insured by an agency of the United States government.

10 (b) Any funds held by a savings institution as fiduciary awaiting investment or distribution and deposited in other
11 departments of the savings institution shall be ~~made productive.~~ placed in an interest-bearing account.

12

13 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31,
14 1992;

15 *Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;*

16 *Eff. November 1, 1982;*

17 *Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16K .0108 is amended with changes as published in 31:23 2309 as follows:

2

3 **04 NCAC 16K .0108 INVESTMENT OF FUNDS HELD AS FIDUCIARY**

4 (a) Funds held by a savings institution in a fiduciary capacity shall be invested in accordance with the instrument
5 establishing the fiduciary relationship. When ~~such the~~ instrument does not specify the character or class of investments
6 to be made and does not vest ~~in the savings institution, its directors, or its officers~~ investment discretion in the matter in
7 the savings institution, its directors, or its officers, funds held pursuant to ~~such the~~ instrument shall be invested in
8 accordance with ~~Article 1 of Chapter 36A~~ Article 7 of Chapter 32 of the North Carolina General Statutes.

9 (b) A savings institution appointed as a fiduciary by a court may invest funds of the account in any investment permitted
10 to be made by fiduciaries by ~~Article 1 of Chapter 36A~~ Article 7 of Chapter 32 of the North Carolina General ~~Statutes,~~
11 Statutes unless the appointing court limits the investment authority of the fiduciary. If the investment authority of the
12 fiduciary is limited by the court, the savings institution ~~must~~ shall make all investments of funds in ~~such these~~ accounts
13 by consistent with the terms of the order of that court. ~~Such~~ The orders in either case shall be preserved with the
14 fiduciary records of the savings institution.

15

16 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on
17 March 31, 1992;

18 *Statutory Authority* G.S. 54B-55; 54B-77; 54C-53; 54C-146;

19 *Eff.* November 1, 1982;

20 *Amended Eff.* November 1, 2017; February 15, 1992.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16K .0109 is amended with changes as published in 31:23 2309 as follows:

2

3 **04 NCAC 16K .0109 SELF-DEALING**

4 (a) Unless authorized by the instrument creating the ~~relationship,~~ relationship or ~~[to]~~ by court order, property held by a
5 savings institution as fiduciary shall not be sold or transferred, by loan or otherwise, to the savings institution or its
6 affiliates; or the directors, executive officers, or employees of either of them; or to individuals with whom there exists
7 ~~such a connection,~~ connection or organizations in which there exists ~~such an interest,~~ interest as might affect the exercise
8 of the best judgment of the savings ~~institution,~~ institution in selling or transferring ~~such the~~ the property, except:

9 (1) ~~In~~ in cases in which the savings institution has been advised by its counsel in writing that it has
10 incurred as fiduciary a contingent or potential ~~liability~~ liability, and ~~desire~~ it desires to relieve itself
11 from ~~such the~~ the liability, ~~such~~ a sale or transfer may be made with the approval of the ~~Board of Directors~~
12 board of directors and the ~~Administrator,~~ Commissioner of Banks, provided that, in all such cases, the
13 savings institution, upon the consummation of the sale or transfer, shall make reimbursement in cash at
14 no loss to the account; ~~[or]~~

15 (2) ~~As~~ as provided ~~the laws and regulations and regulations~~ G.S. 53-163.5, et seq. governing collective
16 investment; or

17 (3) ~~When~~ when required by the ~~Administrator,~~ Commissioner of Banks.

18 (b) If the purchase or retention of stock or obligations of the savings institution is authorized by the instrument creating
19 the ~~relationship,~~ relationship or by court order, it may exercise rights to purchase its own stock, or securities convertible
20 into its own stock, when offered pro rata to stockholders. When the exercise of rights or receipt of a stock dividend
21 results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so
22 acquired. In elections of directors, a savings institution's share held by the savings institution as sole trustee, whether in
23 its own name as trustee or in the name of its nominee, ~~may~~ shall not be voted by the registered owner unless, under the
24 terms of the trust, the manner in which such shares shall be voted may be determined by a donor or beneficiary of the
25 trust and the donor or beneficiary actually directs how the shares will be voted.

26

27 *History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31,*
28 *1992;*

29 *Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;*

30 *Eff. November 1, 1982;*

31 *Amended Eff. November 1, 2017; February 15, 1992.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16K .0110 is amended with changes as published in 31:23 2309 as follows:

2

3 **04 NCAC 16K .0110 CUSTODY OF INVESTMENTS**

4 (a) The investments of each **fiduciary** account shall be kept separate from the assets of the savings ~~institution~~, institution
5 and shall be placed in the joint custody or control of not fewer than two of the officers or employees of the savings
6 institution designated for that purpose either by the ~~Board of Directors~~ board of directors of the savings institution or by
7 one or more officers designated by the ~~Board of Directors~~ board of directors of the savings institution. All officers and
8 employees designated as custodians of trust investments shall be ~~adequately~~ bonded. To the extent permitted by G.S.
9 53-159.1, a savings institution may permit the investments of a fiduciary account to be deposited elsewhere.

10 (b) The investment of each **fiduciary** account shall be either:

11 (1) kept separate from those of all other accounts, except as provided in Rule ~~.0012~~ .0112 of this Section;

12 or

13 (2) ~~adequately~~ identified as the property of the relevant account.

14

15 *History Note:* *Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on*
16 *March 31, 1992;*

17 *Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;*

18 *Eff. November 1, 1982;*

19 *Amended Eff. November 1, 2017; February 15, 1992.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16K .0112 is amended with changes as published in 31:23 2310 as follows:

2

3 **04 NCAC 16K .0112 COLLECTIVE INVESTMENT**

4 (a) Funds held as fiduciary may be held in:

5 (1) **A** a common trust fund maintained by the savings institution ~~exclusively~~ for the collective investment
6 and reinvestment of moneys contributed thereto by the savings institution in its capacity as trustee,
7 executor, administrator, guardian, or custodian under the North Carolina Uniform Transfers to Minors
8 Act; or

9 (2) **A** a fund consisting solely of assets of retirement, pension, profit sharing, stock ~~bonus~~ **[bonus] bonus,**
10 or other trusts ~~which that~~ are exempt from Federal income taxation ~~under~~ pursuant to the Internal
11 Revenue Code.

12 (b) Collective investments of funds or other property by a savings institution under Paragraph (a) of this Rule shall be

13 administered in accordance with Comptroller of the Currency Regulation 9.18, 12 C.F.R. ~~9.18;~~ **9.18, which is hereby**

14 **incorporated by reference** and shall include any later amendments and editions of the referenced ~~[material,]~~ **material.**

15 ~~provided that any~~ This information is available at the U.S. Printing Office website at <http://www.ecfr.gov/cgi-bin/text->

16 [idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9_118&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9_118&rgn=div8)

17 **Any** documents ~~required to be~~ filed with the Comptroller of the Currency ~~under that regulation~~ **pursuant to 12 C.F.R 9.18**

18 shall **also** be filed with the ~~Administrator who may review such documents for compliance with all applicable laws and~~

19 ~~regulations.~~ **Commissioner of Banks.** ~~[This information is available at the U.S. Printing Office website at~~

20 http://www.ecfr.gov/cgi-bin/text-idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9_118&rgn=div8

21 ~~at no cost.]~~

22

23 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31,

24 1992;

25 Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146;

26 Eff. November 1, 1982;

27 Amended Eff. November 1, 2017; February 15, 1992.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16K .0117 is amended with changes as published in 31:23 2310 as follows:

2

3 **04 NCAC 16K .0117 REPORTS AND FEES**

4 Savings institutions engaging in trust operations shall make ~~such~~ reports regarding those operations as the ~~Administrator~~
5 Commissioner of Banks ~~may, from time to time, require~~ requires to evaluate the integrity of the operations. In addition
6 to any other fees, savings institutions acting as fiduciaries shall pay an examination fee for examination of its fiduciary
7 activities, in an amount to be determined by the ~~Administrator~~ Commissioner of Banks in accordance with G.S. 54B-57
8 or 54C-55.

9

10 *History Note:* *Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31,*
11 *1992;*
12 *Statutory Authority G.S. 54B-55; 54B-57; 54B-77; 54C-53; 54C-55; 54C-146;*
13 *Eff. November 1, 1982;*
14 *Amended Eff. November 1, 2017; February 15, 1992.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16L .0102 is amended with changes as published in 31:23 2310 as follows:

2

3 **04 NCAC 16L .0102 DISPOSITION OF ASSETS**

4 (a) After approval of the plan of liquidation by the ~~Administrator,~~ Commissioner of Banks, the savings institution shall,
5 except in case of dissolution under G.S. ~~54B-40 or 54C-40,~~ immediately cause [54B-41 or 54C-41,] G.S. 54C-41, mail a
6 notice of the dissolution ~~to be mailed~~ to each known creditor of the savings ~~institution,~~ institution and to the Secretary of
7 Revenue, and ~~such the~~ notice shall be published once a week for four successive weeks in a newspaper published in the
8 county ~~wherein~~ where the savings institution has its principal office, ~~and, however,~~ if there be no newspaper published in
9 ~~such the~~ county, then in some newspaper of general circulation in ~~such that~~ county. After publication of the notice, the

10 applicant shall file a copy of the notice with the Commissioner of Banks.

11 (b) ~~The savings institution shall then proceed to collect its assets, convey and dispose of such of its properties as are not~~
12 ~~to be distributed in kind to its members or shareholders, pay, satisfy and discharge its liabilities and obligations and do all~~
13 ~~other acts required to liquidate its business and affairs, including the collection of unpaid subscriptions necessary to~~
14 ~~equalize the agreed payments by subscribers of its shares. After approval of the plan of liquidation by the Commissioner~~
15 ~~of Banks, the savings institution shall:~~

16 (1) collect its assets;

17 (2) convey and dispose of its properties that are not to be distributed in kind to its members or
18 shareholders;

19 (3) pay, satisfy, and discharge its liabilities and obligations; and

20 (4) do all other acts required to liquidate its business and affairs, including the collection of unpaid
21 subscriptions necessary to equalize the agreed payments by subscribers of its shares.

22 (c) After paying or ~~adequately~~ providing for the payment of all its obligations, the savings institution shall distribute the
23 remainder of its assets, either in cash or in kind, among its members or shareholders according to their respective rights
24 and interests.

25

26 *History Note:* Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire
27 on March 31, 1992;

28 Statutory Authority G.S. 54B-42; 54B-55; 54C-42; 54C-53;

29 Eff. October 1, 1987;

30 Amended Eff. November 1, 2017; February 15, 1992.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 16L .0103 is amended with changes as published in 31:23 2311 as follows:

2

3 **04 NCAC 16L .0103 ~~REVOCATION~~ RESCISSION AND CANCELLATION OF DISSOLUTION**

4 (a) At any time after the filing of the plan of liquidation and prior to the filing of a certificate of dissolution, a voluntary
5 dissolution may be ~~revoked~~ rescinded by filing ~~of~~ a statement of revocation of dissolution. The contents of ~~such a~~ the
6 statement and the proceedings taken ~~so as~~ to revoke a dissolution shall conform with such the adaptations as are
7 appropriate to revocation ~~under~~ pursuant to either G.S. ~~54B-40 or~~ 54B-41 or ~~54C-40 or 54C-41,~~ G.S. 54C-42.

8 (b) Upon the filing of ~~such the~~ statement of ~~revocation~~ rescission of dissolution, the ~~revocation~~ rescission of the
9 voluntary dissolution proceedings shall become effective and the savings institution ~~may~~ shall be authorized ~~again to~~
10 carry on business.

11

12 *History Note:* *Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire*
13 *on March 31, 1992;*

14 *Statutory Authority G.S. 54B-42; 54B-55; 54C-42; 54C-53;*

15 *Eff. October 1, 1987;*

16 *Amended Eff. November 1, 2017; February 15, 1992.*