

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16 – FORMS

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*The forms for the following rules need to be updated in Box 2 to reflect the name change of the rule:*

*04 NCAC 16E .0103*

*04 NCAC 16G .0312*

*04 NCAC 16G .0511*

*04 NCAC 16H .0105*

*04 NCAC 16I .0801*

*04 NCAC 16I .0901*

*04 NCAC 16I .1001*

*04 NCAC 16I .1301*

*04 NCAC 16K .0110 – Form needs name*

*04 NCAC 16L .0103*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16A .0101 is repealed as published in 31:23 NCR 2275 as follows:

2

3 **04 NCAC 16A .0101 SAVINGS INSTITUTIONS DIVISION**

4

5 *History Note: Authority G.S. 54B-4; 54B-55; 54C-4; 54C-53;*

6 *Eff. August 31, 1981;*

7 *Amended Eff. December 1, 2011; December 6, 1991; January 1, 1990.*

8 *Repealed Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

04 NCAC 16A .0104 is repealed as published in 31:23 NCR 2276 as follows:

### **04 NCAC 16A .0104      SUPERVISORY FEE**

*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-57; 54C-53; 54C-55;*  
*Eff. August 31, 1981;*  
*Amended Eff. February 15, 1992; July 1, 1990; September 1, 1986; October 1, 1982.*  
*Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16A .0105

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4, please clarify what is meant by "federal regulatory authority"*

*Line 5, what is this language in the Rule trying to say? The statute requires "in an amount that may be established in the rules of the Commissioner of Banks, but the requirement shall not be less than five percent (5%) of the assets of the savings bank." The language as drafted says "whichever is greater," but what is "whichever" since the Commissioner has not set an amount? Is it the minimum required by the federal regulatory authority? Please clarify.*

*Lines 27 and 28, consider replacing the commas with semicolons*

*Line 32, what is meant by "thereby" Please clarify*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

04 NCAC 16A .0105 is amended 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 ~~or, for savings banks, or~~ an amount less than the minimum required by ~~G.S. 54C-163. G.S. 54C-163, whichever is greater.~~

(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, or
    - (ii) is supported by the board of directors of the converted savings 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.

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

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

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

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

9 *Eff. August 31, 1981;*

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

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

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

## Permanent Repeal of Consecutive Rules for Publication in the NCAC

04 NCAC 16A .0201 - .0203 are repealed as published in 31:23 NCR 2276 as follows:

**04 NCAC 16A .0201      PETITION FOR ADOPTION: AMENDMENT OR REPEAL OF RULES**

**04 NCAC 16A .0202      NOTICE OF RULE-MAKING HEARINGS**

**04 NCAC 16A .0203      RULE-MAKING HEARINGS: GENERAL INFORMATION**

*History Note:      Authority G.S. 53-93; 54B-55; 150B-12; 150B-20; 150B-21.2(d);*

*Eff. July 1, 1990;*

*Amended Eff. December 1, 2011.*

*Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16A .0301 - .0302 are repealed as published in 31:23 NCR 2276 as follows:

2

3 **04 NCAC 16A .0301 PETITION FOR DECLARATORY RULING**

4 **04 NCAC 16A .0302 RESPONSE OF COMMISSIONER OF BANKS TO PETITION**

5

6 *History Note: Authority G.S. 53-93; 54B-2; 54B-52; 54B-55; 54C-2; 54C-3; 54C-52; 54C-53; 150B-*

7 *2(5); 150B-4;*

8 *Eff. July 1, 1990;*

9 *Amended Eff. December 1, 2011.*

10 *Repealed Eff. November 1, 2017.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16A .0401-.0409

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Lines 13 thru 14, [26 NCAC 02C .0406\(b\)](#) allows consecutive rules to be repealed on one document. However, the authority for all rules should be included. Looking at the repeal of this Section of rules, the authority provided is incorrect. Please review, as it appears to only be the following General Statutes:*

*53-93; 53-104; 54B-55; 150B-38; 150B-39*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Proposed Repeal of Consecutive Rules for Publication in the Register

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

<b>04 NCAC 16A .0401</b>	<b>RIGHT TO HEARING</b>
<b>04 NCAC 16A .0402</b>	<b>INFORMAL SETTLEMENT</b>
<b>04 NCAC 16A .0403</b>	<b>REQUEST FOR HEARING</b>
<b>04 NCAC 16A .0404</b>	<b>NOTICE OF HEARING</b>
<b>04 NCAC 16A .0405</b>	<b>INTERVENTION IN AN ADMINISTRATIVE HEARING</b>
<b>04 NCAC 16A .0406</b>	<b>DEPOSITIONS</b>
<b>04 NCAC 16A .0407</b>	<b>SUBPOENAS</b>
<b>04 NCAC 16A .0408</b>	<b>SERVICE OF SUBPOENAS</b>
<b>04 NCAC 16A .0409</b>	<b>OBJECTION TO A SUBPOENA</b>

*History Note: Authority G.S. 53-93; 54B-2; 54B-52; 54B-55; 54C-2; 54C-3; 54C-52; 54C-53; 150B-2(5); 150B-4; 150B-38; 150B-39; Eff. July 1, 1990; Amended Eff. December 1, 2011. Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

04 NCAC 16C .0101 - .0103 are repealed as published in 31:23 NCR 2277 as follows:

**04 NCAC 16C .0101      FORMS**

**04 NCAC 16C .0102      CHARTER APPLICATION RESTRICTIONS**

**04 NCAC 16C .0103      CORPORATE NAME**

*History Note:      Authority G.S. 54B-2; 54B-9; 54B-10; 54B-52; 54B-55; 54C-2; 54C-9; 54C-12; 54C-52;  
54C-53;*

*Eff. August 31, 1981;*

*Temporary Amendment Eff. August 26, 1985 for a period of 93 days to expire on  
November 26, 1985;*

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

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

*Amended Eff. December 1, 2011; February 15, 1992; July 1, 1990; November 1, 1985.*

*Repealed Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

04 NCAC 16C .0104 is repealed as published in 31:23 NCR 2277 as follows:

### **04 NCAC 16C .0104 INTERIM SAVINGS INSTITUTIONS**

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

*Filed as a Temporary Rule Eff. August 26, 1985 for a period of 93 days to expire on November 26, 1985;*

*Statutory Authority G.S. 54B-45; 54B-55; 54C-46; 54C-53;*

*Eff. November 1, 1985;*

*Amended Eff. February 15, 1992.*

*Repealed Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16C .0105 is repealed as published in 31:23 NCR 2277 as follows:

2

3 **04 NCAC 16C .0105      CONVERSION TO SAVINGS BANK**

4

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-30; 54C-53;*

8 *Eff. February 15, 1992.*

9 *Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16C .0201 - .0203 are repealed as published in 31:23 NCR 2277 as follows

2

3 **04 NCAC 16C .0201 FORM**

4 **04 NCAC 16C .0202 BRANCH OFFICE APPLICATION RESTRICTIONS**

5 **04 NCAC 16C .0203 FORFEITURE OF BRANCH OFFICE FINAL APPROVAL**

6

7 *History Note: Authority G.S. 54B-22; 54B-55; 54C-23; 54C-53;*

8 *Eff. August 31, 1981;*

9 *Amended Eff. November 1, 1982;*

10 *Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire*

11 *on March 31, 1992;*

12 *Amended Eff. December 1, 2011; February 15, 1992; July 1, 1990.*

13 *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16C .0304

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 7, move the clause "other than closures in observation of a holiday" to line 5 after "closed temporarily"*

*Line 7, delete "or both" and simply have a period after "property"*

*Line 9, verify the citations to 53B-110 and 53C-175 as authority*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

*Eff. July 1, 1990;*

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



## Permanent Repeal for Publication in the NCAC

04 NCAC 16C .0305 is repealed as published in 31:23 NCR 2277 as follows:

### **04 NCAC 16C .0305      PURCHASE OF BRANCH**

*History Note:      Authority G.S. 54B-22; 54B-55; 54C-24; 54C-53;*  
*Eff. July 1, 1990;*  
*Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March*  
*31, 1992;*  
*Amended Eff. December 1, 2011; February 15, 1992.*  
*Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

04 NCAC 16C .0401 - .0405 are repealed as published in 31:23 NCR 2277 as follows:

**04 NCAC 16C .0401      DEFINITIONS**

**04 NCAC 16C .0402      APPLICATION: GUIDELINES FOR APPROVAL BY  
ADMINISTRATOR**

**04 NCAC 16C .0403      GENERAL POLICIES**

**04 NCAC 16C .0404      UNMANNED REMOTE SERVICE UNIT ACCESS TECHNIQUES**

**04 NCAC 16C .0405      PRIVACY OF ACCOUNT DATA**

*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-77; 54C-53; 54C-146;*

*Eff. April 1, 1982;*

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

*Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

04 NCAC 16C .0501 - .0503 are repealed as published in 31:23 NCR 2277 as follows:

**04 NCAC 16C .0501      FORM**

**04 NCAC 16C .0502      ACQUISITION RESTRICTIONS**

**04 NCAC 16C .0503      FEES**

*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-48.6; 54B-55; 54C-53; 54C-178;*

*Eff. September 1, 1986;*

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

*Repealed Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16D .0101 is repealed as published in 31:23 NCR 2277 as follows:

2

3 **04 NCAC 16D .0101 COMPOSITION OF BOARD OF DIRECTORS**

4

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

6 *Eff. August 31, 1981;*

7 *Amended Eff. April 15, 1993; February 15, 1992; July 1, 1990; September 1, 1984.*

8 *Repealed Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16D .0103 is repealed as published in 31:23 NCR 2277 as follows:

2

3 **04 NCAC 16D .0103 BYLAWS**

4

5 *History Note: Authority G.S. 54B-2; 54B-9; 54B-52; 54B-55; 54C-2; 54C-9; 54C-52; 54C-53;*

6

*Eff. August 31, 1981;*

7

*Amended Eff. December 1, 2011.*

8

*Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16D .0201 - .0204 are repealed as published in 31:23 NCR 2278 as follows:

2

3 **04 NCAC 16D .0201 VOTING BY PROXY**

4 **04 NCAC 16D .0202 FORM OF PROXY**

5 **04 NCAC 16D .0203 HOLDERS OF PROXIES**

6 **04 NCAC 16D .0204 PROXY SOLICITATION**

7

8 *History Note: Authority G.S. 54B-55; 54B-105;*

9 *Eff. August 31, 1981.*

10 *Amended Eff. December 6, 1991; July 1, 1990.*

11 *Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

04 NCAC 16D .0301 - .0302 are repealed as published in 31:23 NCR 2278 as follows:

**04 NCAC 16D .0301      GENERAL POLICIES**

**04 NCAC 16D .0302      RETENTION: REPRODUCTION AND DISPOSITION OF RECORDS**

*History Note:      Authority G.S. 54B-2; 54B-9; 54B-21; 54B-52; 54B-55; 54C-2; 54C-52; 54C-53;*

*Eff. August 31, 1981;*

*Amended Eff. December 1, 2011; February 15, 1992; July 1, 1990; April 1, 1987;*

*January 1, 1984; July 1, 1983.*

*Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16D .0401-.0403

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 9, [26 NCAC 02C .0406\(b\)](#) allows consecutive rules to be repealed on one document. However, any other dates should be included. Looking at the repeal of this Section of rules, an amended effective date is incorrect. Please review, as it appears to be "November 1, 1985" not "1981"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017



## Proposed Repeal of Consecutive Rules for Publication in the Register

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

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

**04 NCAC 16D .0402      APPRAISALS**

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

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

*Eff. August 31, 1981.*

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

*Repealed Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

1     04 NCAC 16D .0405 is repealed as published in 31:23 NCR 2278 as follows:

2

3     **04 NCAC 16D .0405       UNSECURED LOANS LIMIT**

4

5     *History Note:     Authority G.S. 54B-55; 54B-151;*

6                     *Eff. August 31, 1981;*

7                     *Amended Eff. July 1, 1990.*

8                     *Repealed Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16D .0407 is repealed as published in 31:23 NCR 2278 as follows:

2

3 **04 NCAC 16D .0407 LOANS TO ONE BORROWER**

4

5 *History Note: Authority G.S. 54B-55; 54B-164;*

6 *Eff. July 1, 1983;*

7 *Amended Eff. December 1, 2011; February 15, 1992; July 1, 1990; November 1, 1985;*

8 *January 1, 1985.*

9 *Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16D .0501 - .0502 are repealed as published in 31:23 NCR 2278 as follows:

2

3 **04 NCAC 16D .0501 SIGNATURE CARDS**

4 **04 NCAC 16D .0502 HOLDING OF CERTIFICATE OR PASSBOOK**

5

6 *History Note: Authority G.S. 54B-55; 54B-121;*

7 *Eff. August 31, 1981.*

8 *Repealed Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16D .0504 is repealed as published in 31:23 NCR 2278 as follows:

2

3 **04 NCAC 16D .0504 NEGOTIABLE ORDER OF WITHDRAWAL ACCOUNTS**

4

5 *History Note: Authority G.S. 54B-55; 54B-127;*

6 *Eff. August 31, 1981;*

7 *Amended Eff. February 1, 1983.*

8 *Repealed Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16D .0901 is repealed as published in 31:23 NCR 2278 as follows:

2

3 **04 NCAC 16D .0901      SECURITIES**

4

5 *History Note:      Authority G.S. 54B-55; 54B-193; 54C-53; 54C-141;*

6 *Eff. October 1, 1987;*

7 *Amended Eff. December 1, 2011; July 1, 1990.*

8 *Repealed Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16D .0902 is repealed as published in 31:23 NCR 2278 as follows:

2

3 **04 NCAC 16D .0902 STOCK IN OTHER DEPOSITORY INSTITUTIONS**

4

5 *History Note: Authority G.S. 54B-55; 54B-193; 54C-53; 54C-141;*

6 *Eff. July 1, 1990;*

7 *Amended Eff. December 1, 2011; February 15, 1992.*

8 *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16E .0103

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 32, place a hyphen in the General Statutes citation*

*Line 32, what is meant by "assure"? Should the term be "ensure"? How are the assurances made? Please review and clarify*

*Lines 33, what is meant by "unattainable" or "unreasonably burdensome"? Are these standards defined in another rule or statute that could be cross-referenced? Please clarify.*

*Lines 33 thru 34, delete "Notwithstanding the above"*

*Line 34, capitalize "any"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017



## Permanent Amendment for Publication in the NCAC

04 NCAC 16E .0103 is amended 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(c)~~ 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(c), 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 of the following shall be deemed to be significant ownership interests:

(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~~

(2) For mutual savings banks under fifty million dollars (\$50,000,000) in assets, a two thousand five hundred dollar (\$2,500) deposit relationship; ~~or~~

(3) For stock savings banks over fifty million dollars (\$50,000,000) in assets, stock ownership in the institution or its holding company of five thousand dollars (\$5,000) in market value at time of purchase; or

(4) For mutual savings banks over fifty million dollars (\$50,000,000) in assets, a five thousand dollar (\$5,000.00) deposit relationship.

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

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16E .0104

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4, based on the statutory requirements in G.S. 54B-9 and G.S. 54C-9, how is this rule shortening the 60-day period of review for a proposed set of bylaws? Should the language in this Rule be limited to only "amendments"? Please review and clarify.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

### **04 NCAC 16E .0104      BYLAWS**

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

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

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

*Eff. February 15, 1992;*

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

## Proposed Repeal of Consecutive Rules for Publication in the Register

04 NCAC 16E .0201 - .0204 are repealed as published in 31:23 NCR 2279 as follows:

**04 NCAC 16E .0201      VOTING BY PROXY**

**04 NCAC 16E .0202      FORM OF PROXY**

**04 NCAC 16E .0203      HOLDERS OF PROXIES**

**04 NCAC 16E .0204      PROXY SOLICITATION**

*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-105;*

*Eff. February 15, 1992.*

*Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16E .0301

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 8, is the comma after "examination" necessary? Please review and consider deleting*

*Page 2, line 5, add a comma after "owner"*

*Page 2, line 5, is the comma after "writing" necessary? Please review and consider deleting*

*Page 3, line 15, are the actions "authorized or approved"? Are both options or should it be either "authorized" or "approved"? Please review and clarify if necessary*

*Page 3, line 15, replace "such" with "the"*

*Page 4, line 4, how is this approval of "another storage site" requested? Consider cross-referencing another rule or statute to clarify the process*

*Page 4, lines 5 thru 7, how is this election of the location made? Are there any factors or standards that should be considered when making the election? Please clarify*

*Page 4, lines 8 thru 9, what does this sentence mean? This is a very open clause. What is the "condition of an institution" that may result in the Commissioner requiring more? And what is meant by "examination or otherwise"? Consider cross-referencing another rule or statute to clarify the process*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

(a) Records to be Kept at Principal Office. ~~Every~~ Each savings bank ~~institution, each affiliate, and the institution's parent company~~ shall keep and make available for examination by the representatives of the Commissioner of Banks at the principal office correct and complete office, books of account and minutes of the proceedings of members, shareholders, directors and committees, and records of all the transactions of the institution in its true financial condition. Records shall be kept to permit and facilitate a speedy examination, by the representatives of the Commissioner of Banks. ~~Complete records of all business transacted at the principal office shall be maintained at the principal office. Everything relating to the business of a savings bank shall be examined and investigated by the Commissioner of Banks on a regular and periodic basis determined by the size and complexity and current expected condition and recent performance of the institution, the availability of examiners, coordination of state and federal schedules, the convenience of the institution, and any other requirements or constraints. Every savings bank and service corporation thereof shall be audited at least once in each calendar year by independent auditors. The audit shall be done on the basis of generally accepted accounting principles, unless otherwise provided by this Chapter. The savings bank shall file with the Commissioner of Banks one copy of the audit report along with one copy of the auditor's management letter and any other letters regarding the audit within 90 days after the end of its fiscal year, unless extended in writing by the Commissioner of Banks. Such extension by the Commissioner of Banks shall be granted upon a showing by the savings bank that the failure to file within 90 days of the close of its fiscal year was due to circumstances beyond its control or that compliance with the time period would have resulted in a substantial increase in audit costs. The savings bank shall also submit to the Commissioner of Banks a copy of the savings bank's written response to the auditor's management letter at the time such response is provided to the appropriate federal regulatory authority.~~

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

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

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

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

(f) ~~Appraisal of Real Estate Owned. Every savings bank shall appraise each parcel of real estate at the time of acquisition thereof. The report of each such appraisal shall be submitted in writing to the Board of Directors and shall be 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 the institution shall notify the Commissioner in writing, and  
6 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 action  
16 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 another storage site is approved by the Commissioner of Banks in writing, the books and records of the  
5     institution's parent holding company shall be kept at the institution or at the institution's parent holding company; and  
6     the books and records of an affiliate of the institution shall be kept at the affiliate, the institution, or the institution's  
7     parent holding company.

8     (f) Based upon the financial condition of a savings institution as determined by examination or otherwise, the  
9     Commissioner of Banks may require a savings institution to prepare or maintain different or additional books, records,  
10    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.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16E .0302

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Page 2, line 21, delete the comma after "Books"*

*Page 2, line 23, add an "and" after "Bylaws,"*

*Page 4, line 1, should there be a comma after "Errors"? Are "Auto Errors" separate from "Omissions"? Please review and clarify if necessary*

*Page 4, line 3, add "and" after "Credit,"*

*Page 4, line 10, elect either "and" or "or"*

*Page 8, lines 9, 15, 23, and 27; and page 9, lines 5, 11, and 18, are these topics subsets of "MISCELLANEOUS" on page 6? If that is not correct, then the formatting or organization of this Rule may need to be reviewed.*

*Page 8, lines 30 and 31, is the alignment correct? Please review*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

<u>RECORDS TO BE RETAINED</u>	<u>MINIMUM RETENTION PERIOD (YRS.)</u>
<u>ACCOUNTING - ASSOCIATION</u>	
<u>Bank Statements and Reconcilements</u>	<u>5</u>
<u>Cancelled Checks</u>	<u>5</u>
<u>Check Vouchers or Stubs</u>	<u>5</u>
<u>Duplicate Deposit Slips</u>	<u>5</u>
<u>Expense and Paid Bills File</u>	<u>3</u>
<u>FHLB and State Reports</u>	<u>5</u>
<u>General and Subsidiary Ledgers</u>	<u>P 15</u>
<u>General and Other Journals</u>	<u>P 15</u>
<u>Original Entry Records</u>	<u>5</u>
<u>Pre-authorized Bank Forms</u>	<u>5</u>
<u>Tellers' Cash Proof Sheets</u>	<u>2</u>
<u>Trial Balances</u>	<u>3</u>
<u>CORPORATE</u>	
<u>Audit Reports</u>	<u>3</u>
<u>Pension Trust (IRS Ruling, Bylaws, Trust Agreements)</u>	<u>T+5</u>
<u>Annual Reports to Supervisors</u>	<u>5</u>
<u>Examination Reports and Supervisory Letters</u>	<u>5</u>
<u>Minute Books, (Members, Stockholder, Directors and Committees)</u>	<u>P</u>
<u>Charter, Bylaws and Amendments</u>	<u>P</u>
<u>Blanket Bonds</u>	<u>T+5</u>
<u>Ballots and Proxy Votes of Members and Stockholders</u>	<u>3</u>
<u>Certificate of Insurance</u>	<u>P</u>

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

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

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, 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 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	<del>Loan Register</del>	<del>P</del>
24	<del>Mortgage Loan Disclosure Statement (Form HMDA 1)</del>	<del>5</del>
25	<del>Commitments</del>	<del>T + 3</del>
26	<del>Signature Cards</del>	<del>T + 3</del>
27	<del>Construction Loan Agreement</del>	<del>T + 3</del>
28	<del>Cost Estimates</del>	<del>T + 3</del>
29	<del>Inspection Reports</del>	<del>T + 3</del>
30	<del>Waiver of Liens</del>	<del>T + 3</del>
31	<del>Paid Bills for Borrowers Construction</del>	<del>T + 3</del>
32	<del>Affidavits</del>	<del>T + 3</del>
33	<del>Collection Records</del>	<del>T + 3</del>
34	<del>FHA Insurance Receipts</del>	<del>T + 3</del>
35	<del>Applications</del>	<del>T + 3</del>
36	<del>Appraisals</del>	<del>T + 3</del>
37	<del>Construction Loan Authorizations</del>	<del>T + 3</del>

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



1	<del>Posting or Transaction Journal</del>	3
2	<del>Loan Proceeds Disbursement Records</del>	T+3
3	<del>Interest Rebate Record</del>	T+3
4	<del>Loans Made Record</del>	T+3
5	<del>Loans Paid Record</del>	T+3
6	<del>Liability Card and/or Ledger</del>	T+3
7	<del>Loan Ledger Cards</del>	T+3
8	<del>Note and/or Loan Register</del>	P
9	<del>Resolutions</del>	T+3
10	<del>Charged-off Loan Records</del>	40
11	<del>Collateral Records</del>	40
12	<del>Disclosure Document</del>	2
13	<del>Customer Application</del>	T+1
14	<del>Sales Tickets or Drafts—Credit Card</del>	3
15	<del>Statement of Account—Credit Card</del>	5
16	<del>Merchant Agreement—Credit Card</del>	T+2
17		
18	<u>REAL ESTATE OWNED</u>	
19	<del>Trustee's Report</del>	T+3
20	<del>Appraisal</del>	T+3
21	<del>Contracts for Sale</del>	T+3
22	<del>Leases</del>	T+3
23	<del>Tax Records</del>	T+3
24	<del>Deeds</del>	T+3
25	<del>PMI Claims</del>	T+3
26	<del>Notice of Intent to Foreclose</del>	T+3
27	<del>Title Policies</del>	T+3
28		
29	<u>INSURANCE</u>	
30	<del>Public Liability—Workers Compensation</del>	40
31	<del>Fire and Extended Coverage, Auto Errors and Omissions</del>	3
32	<del>Directors and Officers Liability</del>	40
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	<del>OSHA Records and Reports</del>	<del>6</del>
2		
3	<u>Purchases, Sales and Participation</u>	
4		
5	<del>Agreement</del>	<del>T + 3</del>
6	<del>Sale List</del>	<del>T + 3</del>
7	<del>Remittance Report</del>	<del>T + 3</del>
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>	<u>T + 3</u>
33		
34	KEY TO SYMBOLS USED	
35	P - Permanent	
36	T - <del>Termination (Closed, Paid off or Settled)</del>	
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 Repeal for Publication in the NCAC

1 04 NCAC 16E .0303 is repealed as published in 31:23 NCR 2284 as follows:

2

3 **04 NCAC 16E .0303 REQUIRED POLICIES**

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

5 *March 31, 1992;*

6 *Statutory Authority G.S. 54C-53;*

7 *Eff. February 15, 1992.*

8 *Repealed Eff. November 1, 2017.*

## Permanent Amendment for Publication in the NCAC

04 NCAC 16E .0401 is amended as published in 31:23 2284 as follows:

### **04 NCAC 16E .0401      SERVICING LOANS**

A savings ~~bank~~ institution may service loans originated by the savings ~~bank~~ institution or by other lenders.

*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. 54B-55; 54B-161; 54C-53;*  
*Eff. February 15, ~~1992~~. 1992;*  
*Amended Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

1     04 NCAC 16E .0402 is repealed as published in 31:23 NCR 2284 as follows:

2

3     **04 NCAC 16E .0402       APPRAISALS**

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

5                        *March 31, 1992;*

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

7                        *Eff. February 15, 1992.*

8                        *Repealed Eff. November 1, 2017.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16E .0403

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Page 4, line 5, what is meant by "Unless otherwise provided,"? Provided where? Please clarify*

*Page 4, line 5, text may not be both struck through and underlined. Please delete the phrase "on file" as this was not published in the Register*

*Page 4, line 10, what is meant by "otherwise properly executed"? Please clarify*

*Page 5, lines 18, 20, and 24, consider beginning these clauses with lowercase letters as they appear to be part of a list.*

*Page 5, lines 24 thru 34, text may not be both struck through and underlined. Please review and reflect the language as published in the Register*

*Page 5, line 36, replace "are" with "shall be the following:"*

*Page 6, lines 10 and 25, text may not be both struck through and underlined. Please review and reflect the language as published in the Register*

*Page 6, lines 13 thru 14, delete "at the time of adoption of this Rule was adopted"*

*Page 6, line 26, delete "in ink"*

*Page 6, lines 29, 31, and 34, define or delete "directly"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

04 NCAC 16E .0403 is amended 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~~

- (H) — ~~hypothecation, if any, designating hypothecator, amount, and type of pledge collateral; all to be incorporated in the hypothecation agreement;~~
- (9) — ~~Records on acquisition of mortgaged security to include:~~
- (A) — ~~a detailed record of the acquisition, whether through foreclosure or otherwise, and a description of the property or properties including the name of the former owner;~~
- (B) — ~~maintenance of subsidiary ledger accounts for each separate acquisition, to record all items subject to capitalization or to income and expense during the period such property is owned by the savings bank;~~
- (C) — ~~designation of all fees, charges and commissions and to whom such were paid;~~
- (D) — ~~a copy of the trustee's report relating to foreclosure, when applicable;~~
- (10) — ~~A review of 60 days or over delinquent mortgage loans by the savings bank's board of directors or executive committee at least once a month and such review to be recorded in the minutes of the Board of Directors or Executive Committee meeting;~~
- (11) — ~~A "loans in process account" to support the undisbursed portion of the proceeds of each construction loan; and~~
- (12) — ~~A certification signed by the borrower indicating that the borrower has received the disclosure material required by the Federal Truth In Lending Act, 15 USC 1601 et. seq.~~
- (b) ~~Deposit Account Loans. Each savings bank shall maintain records with respect to each loan secured by deposit accounts which shall include a deposit account loan register. Such loan register or registers shall include:~~
- (1) — ~~account number;~~
- (2) — ~~borrower's name;~~
- (3) — ~~date of loan;~~
- (4) — ~~interest rate;~~
- (5) — ~~payment schedule.~~
- (c) ~~Consumer Loans. Defined as loans for personal, family or household purposes and loans incident thereto, which may be made as either open end or closed end consumer credit, but not including credit extended in connection with credit cards or bona fide overdraft loans. Each institution shall maintain records with respect to each consumer loan 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 collateral securing the loan and the purchase price of the collateral where the purpose of the loan is to purchase said collateral.~~
- (2) — ~~The credit ability of the applicant shall be ascertained in the application and supported by a written credit report and a complete financial statement, verified and analyzed by a qualified loan officer.~~
- (3) — ~~A written appraisal or value estimate of the collateral conforming to the written policies of the institution and dated prior to the approval of the application if the loan is to be secured.~~
- (4) — ~~An approved attorney's title opinion or valid title insurance policy issued by an insurance company authorized to do business in North Carolina if the loan is underwritten based on the value of real estate 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 savings institution shall maintain ~~on file~~ 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;
  - (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);

- (ii) on loans fully secured by obligations of the United States or the State of North Carolina;
- (iii) on loans fully secured by deposits in the savings institution maintaining the loan account; or
- (iv) on loans fully secured by the cash surrender or loan value of life insurance policies.
- (d) Renewal Exceptions. Appraisals need not be renewed biennially where a motor vehicle or mobile home is the sole or partial collateral for a loan.
- (e) Single Signature Exception. An appraisal may be performed and signed by only one person where a motor vehicle or mobile home is the sole collateral for a loan.
- (4) Real Estate Appraisals. Unless otherwise provided, all real estate taken as security for loans shall be appraised in the form and manner set forth in Sub-item (4)(a) through (4)(c) of this Rule. In addition, the appraisal shall be independent in that the appraiser shall not be involved in the loan transaction secured by the property being appraised and shall have no interest, financial or otherwise, in the property.
- (a) The savings institution may elect to waive the requirement for an appraisal of real estate given as security for loans of fifty thousand dollars (\$50,000) or less.
- (b) Appraisals of real estate given as security for loans over fifty thousand dollars (\$50,000), but not exceeding two hundred fifty thousand dollars (\$250,000), whether directly or indirectly pledged as collateral, shall be prepared by:
- (i) Two members of the board of directors who are familiar with real estate values in the community where the property is located;
- (ii) Two savings institution employees who are familiar with real estate values in the community where the property is located, provided that one of the two employees shall not be involved in the loan transaction secured by the property being appraised;
- or
- (iii) A state-licensed real estate appraiser, ~~or~~ state-certified real estate appraiser, or a person certified as a real estate appraiser by an appraisal trade organization approved by the savings institution to perform ~~the~~ an appraisal.
- (c) ~~Except as noted, appraisals required by~~ Appraisals prepared pursuant to Sub-items (4)(b)(i), (ii), and (iii) of this Rule shall be in writing and shall be signed and dated by the person or persons making the appraisal. ~~Additionally, the~~ The appraisal shall identify the loan transaction for which it was made; identify the current balance of any senior lien and the identity of the holder of the lien, if any; segregate values of improvements from values of the land; and describe the property so as to make it easily identifiable. If a professional appraisal form is used that does not include this information, the savings institution shall complete and attach to ~~such~~ the appraisal its own appraisal summary form disclosing the required

- information. The appraisal shall state the basis or approach used to determine the value of the property. Acceptable approaches to determining the value of real property are:
- (i) the current cost of replacing a property, less depreciation relating to deterioration from functional or economic obsolescence;
  - (ii) the value indicated by recent sales of comparable properties in the market and other market factors such as listings and offers to sell; or
  - (iii) the value that the property's net earning power will support, based on a capitalization of net income.
- (d) All real estate given as security for loans in an amount over two hundred fifty thousand dollars (\$250,000), whether directly or indirectly pledged as collateral, shall be appraised, and such appraisal shall be subject to the provisions of 12 C.F.R. 323.1 through 12 C.F.R. 323.7, which are hereby incorporated by reference ~~and includes~~ including subsequent amendments or additions. This information is available at the U.S. Printing Office website at <http://www.ecfr.gov/cgi-bin/text-idx?SID=cb59b820da3e668ebb333139d429ce0c&node=pt12.5.323&rgn=div5> at no cost at the time of adoption of this Rule was adopted.
- (5) Certificate of Title. A title opinion furnished by an attorney at law, a title report or title insurance policy issued by a company licensed by the Commissioner of Insurance, or other insurance coverage that provides the savings institution with similar protection against loss from title defects, errors, or omissions at closing or other loan-related risks shall be obtained in connection with each deed of trust or mortgage given as security on each real estate-secured loan when:
- (a) the loan is primarily secured by real property and only secondarily by the borrower's general credit-worthiness; and
  - (b) the amount of the loan secured by the real property is fifty thousand dollars (\$50,000) or more.
- (6) Stock Certificate and Stock Powers. Where stock certificates or similar negotiable securities are accepted as collateral for a loan, each certificate shall be either endorsed and witnessed ~~in ink~~, or accompanied by a stock power signed and witnessed in ink. Where such collateral is in the name of someone other than the maker or endorser of the note, there shall be on file in the savings institution written authority from the collateral owner permitting the hypothecation of the collateral.
- (7) Corporate Resolutions. A loan made directly to a corporation shall be supported by a certified copy of a resolution of the board of directors of the corporation authorizing the loan transaction.
- (8) Partnership Declaration. A loan made directly to a partnership shall be supported by a declaration of the general partners showing the composition of the partnership, and unless all partners sign the note, the authority of the partner(s) executing the note to bind the partnership.

1       (9)     Limited Liability Company Certification. A loan made directly to a limited liability company shall be  
2             supported by a certification of a manager thereof that the loan has been duly authorized by the limited  
3             liability company.

4       (10)   Unlisted Securities. Full credit information on all unlisted securities, now owned or hereafter acquired,  
5             shall be kept on file in the savings institution.

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-128;*  
10                    *Eff. February 15, ~~1992~~ 1992;*  
11                    *Amended Eff. November 1, 2017.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16E .0404 - .0405

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 9, [26 NCAC 02C .0406\(b\)](#) allows consecutive rules to be repealed on one document. However, any other dates should be included. Looking at the repeal of this Section of rules, an amended effective date is missing. Please review, as it appears an amendment was made on "December 1, 2011"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Proposed Repeal of Consecutive Rules for Publication in the Register

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

2

3 **04 NCAC 16E .0404 UNSECURED LOANS LIMIT**

4 **04 NCAC 16E .0405 LOANS TO ONE BORROWER**

5

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

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

9 *Eff. February 15, 1992.*

10 *Repealed Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

1    04 NCAC 16E .0501 is repealed as published in 31:23 NCR 2288 as follows:

2

3    **04 NCAC 16E .0501        SIGNATURE CARDS**

4

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-164;*

8                    *Eff. February 15, 1992.*

9                    *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16E .0502

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4, what is an "unpledged savings certificate or passbook"? Is the term "unpledged" defined somewhere, as it is not used in either G.S. 54B or 54C. Is this a phrase known to the regulated public? If not, please clarify*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

04 NCAC 16E .0502 is amended as published in 31:23 2288 as follows:

### **04 NCAC 16E .0502      HOLDING OF CERTIFICATE OR PASSBOOK**

An unpledged savings certificate or passbook shall not be held by a savings ~~bank~~ institution for the convenience of an account ~~holder or otherwise unless maintained in a manner designed to ensure its security.~~ holder.

*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. 54B-55; 54B-121; 54C-53; 54C-164;  
Eff. February 15, ~~1992~~, 1992;  
Amended Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16E .0601-.0602

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 7, [26 NCAC 02C .0406\(b\)](#) allows consecutive rules to be repealed on one document. However, the authority for all rules should be included. Looking at the repeal of this Section of rules, the authority provided is incorrect. Please review and add "54C-163*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16E .0601 - .0602 are repealed 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;*  
8 *Eff. February 15, 1992.*  
9 *Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16E .0701 - .0702 are repealed as published in 31:23 NCR 2288 as follows:

2

3 **04 NCAC 16E .0701        SECURITIES**

4 **04 NCAC 16E .0702        STOCK IN OTHER DEPOSITORY INSTITUTIONS**

5 *History Note:    Authority G.S. 54C-53; 54C-141;*

6 *Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on March*  
7 *31, 1992;*

8 *Eff. February 15, 1992;*

9 *Amended Eff. December 1, 2011.*

10 *Repealed Eff. November 1, 2017.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16F .0101

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*G.S. 54B-194 and G.S. 54D-144 allows the following:*

- (d) The permitted activities of a service corporation shall be described in the rules adopted by the Commissioner of Banks.

*If this Rule is addressing that statutory directive, what are the activities? Should the "activities that are approved by the federal regulatory authority" something that could be incorporated in accordance with [G.S. 150B-21.6](#)? Please review and clarify.*

*Lines 4 thru 5, clarify who is the "regulatory authority"*

*Line 6, clarify the process for requesting the approval from the Commissioner of Banks. Consider cross-referencing another rule or statute to clarify the process*

*Line 7, replace "Such" with "The"*

*Line 9, define or delete "properly"*

*Line 9, specify the "law or regulation"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

The service corporation of a savings institution may engage in ~~those~~ activities ~~which~~ that are approved by the federal regulatory authority for service corporations owned ~~solely~~ by federal associations ~~which~~ that have principal offices in this ~~State, State~~ and may engage in any other activity authorized for state-chartered savings institutions and approved in advance in writing by the ~~Administrator.~~ Commissioner of Banks. Such other activities shall be approved ~~only~~ upon a showing by the savings institution that the activity enhances the safe and sound operation of the savings institution, is properly managed, is subject to adequate controls, and is not otherwise violative of law or regulation.

*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-194; 54C-53; 54C-144;*  
*Eff. August 31, 1981;*  
*Amended Eff. November 1, 2017; May 11, 1992; July 1, 1990; October 1, 1987.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16F .0103

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Lines 6 thru 7, does the clause "net worth and unsecured debt" mean "total assets"? If so, what is different about this language from G.S. 54B-194(b) or 54C-144(b)? Why is this language necessary? Please clarify*

*Lines 8 thru 11, what is the authority to create this "or" exception? There is nothing in G.S. 54B-194 or 54C-144 to deviate from the 10% of total assets. Item (2) appears to be an alternative that does not exist in the cited statutory authority. Please clarify.*

*Line 8, define or delete "solely"*

*Line 11, what is meant by "savings institution's lending policy"? Is this a document outside the control and review of the Commissioner of Banks? Please clarify*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

- (1) ten times the total of the service corporation's net worth and unsecured debt to the savings institution;  
or
- (2) twenty times ~~such~~ the total if the service corporation engages solely in originating, investing in, selling, purchasing, servicing, or otherwise dealing in (including brokerage or warehousing) ~~loans, loans~~ and participations in loans, ~~on a prudent basis that are~~ underwritten in accordance with the savings institution's lending policy and secured by real estate or liens on mobile homes.

*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-194; 54C-53; 54C-144;*  
*Eff. August 31, 1981;*  
*Amended Eff. November 1, 2017; May 11, 1992.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16F .0105

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Lines 5 thru 6, how is this approval of "form and content of the proposed amendment" conducted? Consider cross-referencing another rule or statute to clarify the process*

*For Paragraph (b), in light of G.S. 54B-9 and G.S. 54C-102, what is the purpose of this Paragraph? This seem duplicative of the statutory requirements. Based on these statutes, is this Paragraph necessary? Should it only be applicable to amendments for purposes of G.S. 53, based on the specific language in G.S. 54C-102?*

*If Paragraph (b) remains, add 54C-102 to the statutory authority.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

04 NCAC 16F .0105 is amended as published in 31:23 2288 as follows:

### **04 NCAC 16F .0105      AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS**

(a) Prior to filing with the Secretary of State of North Carolina, a service corporation shall file with the Commissioner of Banks copies of any proposed amendment to its articles of incorporation. The Commissioner of Banks must ~~give his approval to approve~~ approve the form and content of ~~such the proposed amendment as set forth in G.S. 54B-12 and G.S. 54B-13.~~ amendment.

(b) Before the bylaws or any amendments to the bylaws of a service corporation ~~can~~ shall become effective, a certified copy of the bylaws or amendments shall be filed with and approved by the Commissioner of Banks ~~as set forth in G.S. 54B-12 and G.S. 54B-13.~~ Banks. ~~In the event of the failure of the~~ If the Commissioner of Banks fails to act upon the bylaws or amendment within ~~25~~ 60 days of receipt, the bylaws or amendment shall be deemed approved.

*History Note:*      *Authority G.S. 54B-55; 54B-194; 54C-53; 54C-144;*

*Eff. August 31, 1981;*

*Amended Eff. November 1, 2017; December 1, 2011; July 1, 1990.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

04 NCAC 16F .0106 - .0113 are repealed as published in 31:23 NCR 2288 as follows:

<b>04 NCAC 16F .0106</b>	<b>ESTABLISHMENT OF FINANCE SUBSIDIARIES</b>
<b>04 NCAC 16F .0107</b>	<b>BOARD ACTION REQUIRED</b>
<b>04 NCAC 16F .0108</b>	<b>FINANCE SUBSIDIARY TRANSACTIONS WITH PARENT</b>
<b>04 NCAC 16F .0109</b>	<b>ISSUANCE OF SECURITIES BY FINANCE SUBSIDIARIES</b>
<b>04 NCAC 16F .0110</b>	<b>TRANSFER OF PROCEEDS</b>
<b>04 NCAC 16F .0111</b>	<b>HOLDING COMPANY SUBSIDIARIES AND FINANCE SUBSIDIARIES</b>
<b>04 NCAC 16F .0112</b>	<b>NOTIFICATION TO THE COMMISSIONER OF BANKS</b>
<b>04 NCAC 16F .0113</b>	<b>EXAMINATION OF FINANCE SUBSIDIARIES</b>

*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-77; 54B-195; 54C-53; 54C-144; 54C-146;*  
*Eff. October 1, 1984;*  
*Amended Eff. December 1, 2011; May 11, 1992.*  
*Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0103

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 5, delete the comma after “apply” and replace it with a semicolon considering the following technical change request*

*Line 5, delete the clause “unless the context requires otherwise”*

*Lines 7, 18, and 19 uses the terms “directly” or “indirectly” Are the use of the terms in these definitions known to the regulated public? If not, please clarify*

*Line 22, what is meant by “thereof”? Please clarify or consider deleting*

*Lines 25 thru 26, the cross-reference to the identified rule does not define or explain what is an “eligible account holder” but the term “supplemental eligible account holder” in Item (25) appears to define a qualifying set of persons. Why not combine those two terms and delete the cross-reference to “Rule .0311 of this Subchapter”?*

*Line 30, add “the following” after “mean”*

*Line 35 uses the term “policy-making” Is the use of the term in this definition known to the regulated public? If not, please clarify*

*Page 2, line 8 uses the term “willing, and able” Is the use of the term in this definition known to the regulated public? If not, please clarify*

*Page 2, line 8 uses the term “reasonable quantities” Is the use of the term in this definition known to the regulated public? If not, please clarify*

*Page 2, line 25, add “or her” to “his”*

*Page 2, line 33, move the period inside the quotation marks on “security”*

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017



*Page 2, line 35, what is meant by “foregoing”? Should the clause read “subscribe to, or purchase.”? Is there a comma missing before “or purchase”? Consider deleting the clause “any of the foregoing” as there is an “or” in the list of actions. Please clarify*

*Page 3, line 4, delete the comma after “apply”*

*Page 3, line 6, the citation to “Rule .0514” should be reviewed and updated, as that rule has been adopted to be repealed. Please update the citation accordingly*

*Page 3, line 15, should the “and” be an “or”? Please review and clarify if necessary*

*Page 3, line 18 uses the terms “directly” or “indirectly” Are the use of the terms in these definitions known to the regulated public? If not, please clarify*

*Page 3, line 26, the term “term” was replaced with “Undertaking” Based on the term “underwriting” being defined, is the use of the term “undertaking” correct? Please clarify if necessary.*

*Page 3, line 29, add “or she” after “he”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

## Permanent Amendment for Publication in the NCAC

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

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

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

- (1) ~~"Affiliate," "an~~ "An affiliate of," or "a person affiliated with" used in connection with another specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is under common control ~~with,~~ with the person specified.
- (2) "Amount," when used in regard to securities, shall mean the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares of stock, ~~and or~~ or the number of units if relating to any other kind of security.
- (3) "Applicant" shall mean a savings ~~bank which~~ institution that has applied to convert to stock ownership pursuant to this Subchapter.
- (4) "Broker" shall mean any person engaged in the business of effecting transactions in securities for the account of others.
- (5) ~~"Capital stock" shall mean common stock, permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital.~~
- (5) "Dealer" shall mean any person who engages either for all or part of ~~his~~ their time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
- (6) "Deposit account" shall mean that part of the liability of the savings ~~bank which~~ institution that is credited to the account of the holder thereof, including certificates of deposit.
- (7) "Eligibility record date" shall mean the record date for determining eligible account holders of a converting savings ~~bank.~~ institution.
- (8) "Eligible account holder" shall mean any person holding a qualifying deposit as determined in accordance with Rule .0313 of this Subchapter.
- (9) "Employee" shall not mean a director or executive officer of a savings ~~bank.~~ institution.
- (10) "Equity security" shall ~~mean any stock or similar security, or any security convertible, with or without considerations, into such security, or carrying any warrant or right to subscribe to or purchase such security, or any such warrant or right. mean:~~
  - (a) any stock or similar security;
  - (b) any security convertible, with or without considerations, into a security, or carrying any warrant or right to subscribe to or purchase a security; or
  - (c) any warrant or right to subscribe to or purchase a security.
- (11) "Executive Officer" shall mean any person performing a ~~policy making~~ policy-making function with respect to any ~~organization~~ organization, whether incorporated or unincorporated.

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

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

~~(24)~~ (23) "Subscription offering" shall mean ~~the offering of~~ shares of capital stock, through nontransferable subscription ~~rights issued~~ rights, to:

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

~~(25)~~ (24) "Subsidiary" of a specified person shall mean a person controlled, directly or indirectly, through one or more intermediaries by the specified person.

~~(26)~~ (25) "Supplemental eligible account holder" shall mean any person holding a qualifying deposit, except executive officers, directors, and their associates, as of the supplemental eligibility record date required by Rule .0311 of this Subchapter.

~~(27)~~ (26) "Underwriter" shall mean any person who has purchased from an applicant with a view to, or any person who offers or sells for an applicant in connection with, the distribution of any security; or participates or has a direct or indirect participation in the direct or indirect underwriting of any ~~such~~ undertaking. ~~Such term~~ Undertaking shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. The term "principal underwriter" shall mean an underwriter in privity of contract with the applicant or other issuer of securities as to which he is the underwriter.

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0104

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 6, delete the clause "as applicable"*

*Line 8, where is the authority to restrict conversions to not become subject to a taxable reorganization? Is this language because of G.S. 54B-261? Why repeat the requirement in this Rule then? If the language needs to remain in this Rule, then update the statutory authority accordingly.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

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

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

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

## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16G .0105 is repealed as published in 31:23 NCR 2290 as follows:

2

3 **04 NCAC 16G .0105 APPLICATION FOR CONVERSION**

4

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

6 *Eff. February 15, 1992.*

7 *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0106

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*For this Rule, where is the authority to deem these records confidential? Is this language not contrary to G.S. 54C-60(c), as it specifically states the "information contained in an application is deemed to be public information"? The citation to G.S. 53C-2-7 applies to "records of the Commission" and not the applicant. Is it that the Commission is merely seeking a recommendation from the applicant, and then will separately make a determination? Is so, then consider re-writing to indicate that the applicant "may request" that the information be confidential" by some statutory protection other than G.S. 54C-60(c) "as follows:" Please clarify. If the language needs to remain in this Rule, then update the statutory authority accordingly.*

*Line 5 references an "Application for Conversion" [G.S. 150B-2\(8a\)d](#) does not require an application to be a rule if "the contents or substantive requirements of which are prescribed by rule or statute." Is there a rule or statute that provides the information required in the application? Could it be cross-referenced? Please clarify.*

*Line 6, place the term "confidential" in quotation marks like on line 10*

*Line 21, place the statutory authority in numerical order, as required by [26 NCAC 02C .0108\(8\)\(d\)](#)*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017



## Permanent Amendment for Publication in the NCAC

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

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

~~Should the~~ If an applicant desires to submit any submits information it deems to be of a confidential nature regarding the answer to any item or a part of any exhibit included in the Application for Conversion, such the information ~~pertaining to~~ such item or exhibit shall be separately bound and labeled "~~confidential,~~" confidential and a statement shall be submitted ~~therewith briefly~~ setting forth the grounds on which such the information should be treated as confidential ~~under~~ pursuant to G.S. 54C-60. Only general reference ~~thereto need~~ to such confidential information shall be made in that portion of the application ~~which that~~ the applicant deems not to be confidential. Applications under this Subchapter shall be made available for inspection by the public, except for portions ~~which that~~ are bound and labeled "confidential" and ~~which that~~ the Commissioner of Banks determines to be of a confidential nature ~~under~~ confidential pursuant to G.S. 54C-60. ~~The administrator will withhold the public availability of preliminary copies of proxy-soliciting materials without the necessity of their being bound and labeled as "confidential".~~ Preliminary copies of proxy-soliciting materials shall be confidential regardless of whether they are bound and labeled as "confidential." The applicant ~~will~~ shall be advised of any decision by the ~~administrator~~ Commissioner of Banks to make public information designated as "confidential" by the applicant. ~~Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, the administrator, to the extent permitted by G.S. 54C-60, Notwithstanding the provisions of this Rule and to the extent permitted by G.S. 54C-60, the Commissioner of Banks may comment on such the confidential submissions in any public statement in connection with any decision on regarding the application without prior notice to the applicant.~~

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

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

*Amended Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0311

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Please review this Rule. The use of "Paragraph" and "Item" is not consistent as used throughout this Rule. Please correct.*

*For each Item, considering the addition on line 4 of the clause "shall include the following:," delete the "Provide that" clause from each Item of this Rule, as it is an unnecessary clause. If this suggested change does not address the concerns of the agency, consider replacing "include" on line 4 with "provide" to help clarify the requirements of this Rule*

*Line 6, where the "such" has been deleted, should the term "the" be added?*

*Line 9, considering the remainder of this Rule, why was the comma after "payment" deleted? Consider adding the comma back to be consistent with the remainder of the Rule*

*Page 2, line 20, add "the following" after "include"*

*Page 2, line 21; and page 3, lines 7, 11, and 14, as these items appear to be part of a list, consider beginning the clauses with lowercase letters.*

*Page 4, line 20, define or delete "substantively"*

*Page 4, line 27, reorganize "shall be not" to "shall not be"*

*Page 4, line 29, how is this extension requested and when it is granted? Is there a procedure defined in another rule or statute that could be cross-referenced? Please clarify.*

*Page 4, line 33, was it appropriate to delete the comma after "purchase"? Please review*

*Page 5, line 12, what is the change between "~~split~~ split" Was the intent to add a comma after the second "split"? Please review and clarify*

Abigail M. Hammond  
Commission Counsel

Date submitted to agency: Friday, September 29, 2017

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

04 NCAC 16G .0311 is amended 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~~ 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.

3 (c) In the event of an oversubscription for supplemental shares pursuant to this  
4 Paragraph, shares shall be allocated among the subscribing supplemental eligible  
5 account holders on ~~such an~~ equitable basis, related to the amounts of their respective  
6 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 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, shares shall be allocated among  
14 the subscribing voting members on such equitable basis as may be provided in detail in the  
15 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:

22 (a) ~~A condition 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 that orders for stock in any public offering or direct  
8 community offering shall first be filled up to a maximum of two percent of the  
9 conversion stock per order and thereafter remaining shares shall be allocated on an  
10 equal number of shares basis per order until all orders have been ~~filled;~~ filled;
- 11 (c) ~~A condition requiring the~~ Requiring that stock to be offered and sold in the public  
12 offering or the direct community offering ~~to shall~~ be offered and sold in a manner  
13 requiring that will achieve the widest distribution of the ~~stock;~~ stock; or
- 14 (d) ~~A condition that any~~ Any direct community offering by the applicant shall give a  
15 preference to ~~natural persons~~ a person residing in the counties in which the applicant  
16 has an office.
- 17 (7) Provide that the number of shares ~~which~~ that any person together with any associate or group  
18 of persons acting in concert may subscribe or purchase in the conversion shall not exceed five  
19 percent of the total offering of ~~shares;~~ shares, except that any one or more tax-qualified  
20 employee stock benefit plans of the applicant may purchase in the aggregate not more than 10  
21 percent of the total offering of shares. Shares held by one or more tax-qualified or  
22 non-tax-qualified employee stock benefit plans and attributed to a person shall not be  
23 aggregated with shares purchased directly by or otherwise attributable to that person. For  
24 purpose of this ~~Paragraph, Item~~ the members of the converting savings ~~bank's~~ institution's  
25 board of directors shall not be deemed to be associates or a group of persons acting in concert  
26 solely as a result of their board membership.
- 27 (8) Provide that for a period of three years following the conversion no executive officer or  
28 director or any associate of an executive officer or director shall purchase without the prior  
29 written approval of the ~~administrator~~ Commissioner of Banks the capital stock of the  
30 converted savings ~~bank~~ institution except from a broker or dealer registered with the Secretary  
31 of State of North Carolina ~~and/or~~ or the Securities and Exchange Commission. This provision  
32 shall not apply to negotiated transactions involving more than one percent of the outstanding  
33 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 more than 12 months from the date the members  
28 approve the plan of conversion. This time period may be extended an additional 12 months by  
29 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~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Eff. February 15, 1992;*



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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0312

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4, delete "or all"*

*For each Item, delete the "That" term from each Item of this Rule, as it is an unnecessary clause.*

*Lines 6 and 7 uses the term "concurrently" Is the use of the term in this Rule known to the regulated public? If not, please clarify*

*Lines 24 and 27, where the "such" has been deleted, should the term "the" be added?*

*Page 2, line 14, should the phrase be "subscription offering, in a public offering, or direct community offering..."? Please review and clarify*

*Page 2, line 34, specific statutory citations have been provided, but the statutes do not address the content of the proxy statement. Should this Rule instead contain a cross-reference to Rule .0512 of this Subchapter? Please review and clarify*

*Page 3, line 6, replace "will" with "shall"*

*Page 3, line 7, the citation to "Rule .0607" should be reviewed and updated, as that rule has been adopted to be repealed. Please update the citation accordingly*

*Page 3, line 8, considering changes made in other rules, should the term "administrator" be "Commissioner of Banks"? Please review and clarify if necessary*

*Page 3, line 8, add a comma after either "administrator" (or "Banks" if changed as requested in the preceding technical change request)*

*Page 3, line 21, add a comma after "holders"*

*Page 3, line 22, why was the comma after "holders" added? Please review*

Abigail M. Hammond  
Commission Counsel

Date submitted to agency: Friday, September 29, 2017

*Page 3, lines 24, 26 and 35, why is the term “accountholders” used when the term is statutorily “account holder”? Please review this entire Rule for consistency*

*Page 3, line 35, should “converting institution’s” be added between “market” to clarify who is considered? Or should it merely be “applicant’s” as used on Page 4, line 1? Please review and clarify*

*Page 4, line 8, should the “of stock” be added between “shared to”*

*Page 4, line 15, underline “Item” as this is a change to the current language in the Administrative Code*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

## Permanent Amendment for Publication in the NCAC

04 NCAC 16G .0312 is amended 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 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, 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 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~~ 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~~ 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 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 this

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

(5) That the applicant may require eligible account holders and supplemental eligible account holders who  
are not voting members ~~pursuant to Rule .0608 of this Subchapter~~ to return by a reasonable date  
certain a postage-paid written communication in accordance with the procedure established in  
~~Paragraph Item~~ (4) of this Rule.

(6) That any ~~insignificant~~ residue of shares of the converting savings ~~bank~~ institution not sold in the  
subscription offering or in a public offering or direct community offering may be sold ~~in such other~~  
~~manner~~ as provided in the plan of conversion with the written consent of the ~~administrator~~.  
Commissioner of Banks.

(7) That the number of shares ~~which that~~ any person or group of persons affiliated with each other or  
otherwise acting in concert may subscribe for in the subscription offering may be made subject to a  
limit of not less than one percent of the total offering of the shares.

(8) That any person exercising subscription rights to purchase capital stock shall be required to purchase a  
minimum number of ~~shares~~ shares, but the aggregate price for any minimum share purchase shall not  
exceed five hundred dollars (\$500.00).

(9) That the converted savings ~~bank~~ institution shall issue and sell, in lieu of shares of its capital stock,  
units of securities consisting of capital stock and long-term warrants or other equity securities, in which  
event any reference in the provisions of this Subchapter to capital stock shall apply to ~~such~~ units of  
equity securities unless the context otherwise requires.

(10) That, instead of a separate subscription offering, all subscription rights issued in connection with the  
conversion shall be exercisable by delivery of ~~properly~~ completed and executed order forms to the  
underwriters or selling group for the public offering or pursuant to any other procedure, subject to the  
applicant demonstrating to the ~~administrator~~ Commissioner of Banks the feasibility of the method of  
exercising such right and to such conditions as shall be provided in the plan of conversion.

(11) That the ~~administrator~~ Commissioner of Banks may approve ~~such~~ other equitable provisions as  
necessary to avert ~~imminent~~ injury to the converting savings ~~bank~~ institution.

(12) That the proxy statement ~~required~~ authorized by ~~Rule .0607 of this Subchapter~~ G.S. 54B-33 or 54C-33  
may be in summary form, ~~provided:~~ provided the proxy meets the requirements of 04 NCAC 16G  
.0512.

- (a) ~~A statement is made in bold faced type on the summary proxy statement that a more detailed description of the proposed transaction may be obtained by returning an attached postage paid postcard or other written communication requesting a supplemental information statement which, together with the summary proxy statement, complies with the requirements of Form PS contained in the Application for Conversion.~~
- (b) The date on which the summary proxy statement is mailed to members will be deemed the date on which notice is given for purposes of Rule .0607 of this Subchapter. Without the prior written consent of the administrator the meeting of members shall not be held less than 20 days after the date on which the supplemental information statement is mailed to requesting members.
- (c) ~~The supplemental information statement required to be furnished to members pursuant to Subparagraph (a) of this Paragraph may be combined with Form OC, if the subscription offering is commenced concurrently with or during the proxy solicitation period pursuant to Paragraph (1) of this Rule.~~
- (d) ~~The form of the summary proxy statement has been approved by the administrator.~~
- (13) That, in the event that the converting institution is establishing a tax-qualified employee stock ownership plan (ESOP) for the benefit of its employees, then notwithstanding the priorities established under ~~Subparagraphs~~ Items (2), (4), and (5) of Rule .0311 of this Section, the plan of conversion may provide that ~~such the~~ ESOP may purchase up to 10 percent of the aggregate shares offered in the conversion prior to offering ~~any~~ shares to eligible account holders, supplemental eligible account holders or other voting members.
- (14) That eligible ~~accountholders~~ account holders, shall be divided into two subcategories for purposes of determining the aggregate number of shares of conversion stock allocated to be purchased by ~~such~~ accountholders in each subcategory: those whose permanent residence is within the market area of the converting institution and those whose permanent residence is outside the market area of the converting institution. ~~The A~~ A plan of conversion that divides accountholders into subcategories shall provide:
- (a) That each eligible accountholder who resides within the applicant's market area shall receive nontransferable subscription rights to purchase a number of shares based on ~~such the~~ the accountholder's qualifying deposit balance up to the maximum purchase limitation established pursuant to Rule .0311(7) of this ~~Section; Section~~, provided that the aggregate number of shares of conversion stock to be allocated for purchase by eligible ~~accountholders~~ account holders within the converting institution's market area shall equal that number of shares (rounded to the nearest whole number) determined by multiplying the total number of shares of stock to be sold in the offering times a fraction the numerator of which is the sum of qualifying deposits held by eligible accountholders residing inside the market 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 to be sold in the offering times a fraction the numerator of which is  
9 the sum of qualifying deposits held by eligible ~~accountholders~~ account holders residing  
10 outside the converting institution's market area and the denominator of which is the sum of all  
11 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, a converting institution shall define its "market area"  
16 to include each county in which it has an office and may include ~~such~~ additional counties  
17 contiguous to those counties in which it maintains an ~~office (regardless~~ office, regardless of  
18 whether such counties are in the State of North ~~Carolina)~~ Carolina, ~~as it may designate to be~~  
19 ~~part of its "market area" in its plan of conversion.~~
- 20

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

04 NCAC 16G .0313 is amended as published in 31:23 2296 as follows:

### **04 NCAC 16G .0313      RECORD DATES FOR QUALIFYING DEPOSITS**

~~Unless otherwise provided in the plan of conversion, for the purposes of this Section, the~~ The amount of the qualifying deposit of an eligible account holder or supplemental eligible account holder shall be the total of the deposit balances in the eligible account holder's or supplemental eligible account holder's deposit accounts in the converting savings ~~bank~~ institution as of the close of business on the eligibility record date or supplemental eligibility record date. ~~However, the~~ The plan of conversion may provide that any deposit accounts with total deposit balances of less than fifty dollars (\$50.00) ~~or any lesser amount~~ shall not constitute a qualifying deposit.

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



## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16G .0314 is repealed as published in 31:23 NCR 2296 as follows:

2

3 **04 NCAC 16G .0314 LIQUIDATION ACCOUNT**

4

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

6 *Eff. February 15, 1992*

7 *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0315

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4, considering changes made in other rules, should the term "bank" be "institution"?  
Please review and clarify if necessary*

*Line 5, add a comma after "agent"*

*Line 6, delete the "or" at the end of the clause*

*Line 12, add a line space between the rule text and the history note in accordance with [26 NCAC 02C .0108\(8\)\(b\)](#)*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

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

## Permanent Repeal for Publication in the NCAC

1     04 NCAC 16G .0316 is repealed as published in 31:23 NCR 2296 as follows:

2

3     **04 NCAC 16G .0316        MERGER OF CONVERTED SAVINGS BANKS**

4

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

6                        *Eff. February 15, 1992.*

7                        *Repealed Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16G .0404 is repealed as published in 31:23 NCR 2296 as follows:

2

3 **04 NCAC 16G .0404        INFORMATION PRIOR TO APPROVAL OF PLAN OF CONVERSION**

4

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

6                    *Eff. February 15, 1992.*

7                    *Repealed Eff. November 1, 2017.*

## Permanent Amendment for Publication in the NCAC

04 NCAC 16G .0405 is amended as published in 31:23 2296 as follows:

### **04 NCAC 16G .0405 NOTICE OF FILING**

(a) Upon determination that an application for conversion is ~~properly executed and is not materially incomplete, complete, the administrator will~~ Commissioner of Banks shall advise the ~~applicant, in writing, applicant~~ to publish a notice of the filing of the application. ~~Promptly after receipt of such advice, the applicant shall prominently post the notice in each of its offices and publish a notice of such filing in a newspaper having general circulation in each community in which an office of the applicant is located, as follows:~~ The applicant shall publish the notice in a newspaper having general circulation in the community that the home office of the applicant is located, and the notice shall state the following:

#### NOTICE OF FILING OF AN APPLICATION FOR CONVERSION TO A STOCK SAVINGS BANK

Notice is hereby given that, pursuant to General Statute 54C-33,

---

(fill in name of applicant)

has filed an application with the ~~administrator of the Savings Institutions Division~~ Office of the Commissioner of Banks for approval to convert to the stock form of organization. Copies of the application have been delivered to the ~~Savings Institutions Division, 1110 Navaho Drive, Suite 301, Raleigh, North Carolina, 27609.~~ North Carolina Office of the Commissioner of Banks, 316 W. Edenton Street, Raleigh, North Carolina 27603.

Written comments, including ~~any~~ objections to the plan of conversion and materials supporting ~~such the~~ objections, from any member of the applicant or ~~any~~ aggrieved person ~~will~~ shall be considered by the ~~administrator~~ Commissioner of Banks if filed within ~~40~~ 14 business days after the date of this notice. ~~Failure to make such written comments or objections may preclude the pursuit of any administrative or judicial remedies. Any comments~~ Comments or objections shall be sent to the ~~administrator~~ Commissioner of Banks at the address noted above. ~~The proposed plan of conversion and any comments thereon will be available for inspection by any member of the applicant at the office of the administrator.~~ A copy of the plan may ~~also be inspected at each office of~~ obtained from the applicant.

~~(b) If a significant number of the applicant's members only speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of the notice shall also be published in that newspaper.~~

~~(c) (b)~~ Promptly after After publication of the notice prescribed in Paragraph (a) of this Rule, the applicant shall file a copy of the notice with the ~~administrator.~~ Commissioner of Banks. The applicant shall also file a copy of an affidavit of publication from each newspaper publisher.

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

- 1                    *Eff. February 15, ~~1992~~ 1992;*
- 2                    *Amended Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0509

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 11, considering changes made in other rules, should the term "bank" be "institution"?  
Please review and clarify if necessary*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017



## Permanent Amendment for Publication in the NCAC

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

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

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

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

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

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

*Amended Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0510

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Lines 6 and 7, the clause "in writing" should not be set off by commas in this Rule if it is a necessary part of the sentence. Please review.*

*Lines 6 thru 7, how is the approval by the Commissioner of Banks sought and by whom? Is the saving institution asking for this approval? Are the proxy filing requirements set forth in Rule .0513? Please clarify and consider adding a cross-reference to the Rule setting forth the procedures for approving a proxy solicitation.*

*Lines 10 thru 12, clarify how an extension is sought and clarify the process for requesting an extension from the Commissioner of Banks. Consider cross-referencing another rule or statute to clarify the process*

*Line 11, if the clause "if approved in writing" is necessary to this Rule, then relocate to Line 10 to state "The Commissioner of Banks may approve in writing to extend the date..."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

Proxy solicitation material shall not be furnished to members or distributed until the material has been authorized, in writing, by the Commissioner of Banks. Proxy solicitation material authorized for use by the administrator

Commissioner of Banks shall be mailed to the members within 10 days of such authorization or within 10 days of the date such that the material is declared effective by the Securities and Exchange Commission, if applicable, whichever is later. The administrator Commissioner of Banks may extend such the date upon a showing that adherence to the 10-day rule would work cause a hardship upon the savings institution and that the delay, if approved in writing, would not be disadvantageous to any interested party.

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

## Permanent Amendment for Publication in the NCAC

04 NCAC 16G .0511 is amended as published in 31:23 2297 as follows:

### **04 NCAC 16G .0511      INFORMATION TO BE FURNISHED TO MEMBERS**

No solicitation shall be made unless each person solicited is ~~concurrently~~ furnished, or has previously been furnished, a written proxy statement ~~the use of which~~ that has been authorized ~~in writing~~ by the ~~administrator~~, Commissioner of Banks.

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

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

*Amended Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0512

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 9, delete the term "requirement"*

*Line 23, replace "Subsection" with "Subparagraph"*

*Line 24, replace "will" with "shall"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

(a) The form of proxy shall:

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

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

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

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

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0513

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 10, add a comma after "proxy"*

*Line 10, delete the comma after "material"*

*Lines 20 thru 24, where is the authority to deem these records confidential? Is this language not contrary to G.S. 54C-60(c), as it specifically states the "information contained in an application is deemed to be public information"? If the language needs to remain in this Rule, then update the statutory authority accordingly.*

*If the information provided in this Rule qualifies as "confidential information," then what is the purpose of the language in lines 22 thru 24, as G.S. 54C-60(d) would control and specifies who is still entitled to obtain "confidential information." This portion seems unnecessary and should be deleted*

*Line 27, delete the term "theretofore"*

*Line 28, replace "need" with "shall"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

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

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

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

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

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

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

*Eff. February 15, 1992;*

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



## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16G .0514 is repealed as published in 31:23 NCR 2298 as follows:

2

3 **04 NCAC 16G .0514 MAILING COMMUNICATIONS FOR MEMBERS**

4

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

6 *Eff. February 15, 1992.*

7 *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0515

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Paragraph (a) is cumbersome and awkward to read. Consider the following re-write:*

Any solicitation of a proxy for the meeting to vote on the plan of conversion by the applicant, its management, or any other person shall not contain, or by intentional omission, provide false or misleading statements with respect to any material fact of the conversion.

*Line 13, add a comma after "complete"*

*Line 13, delete the "or" after "complete"*

*Lines 18 and 19, replace the commas at the end of the clause with semicolons*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

(a) No solicitation of a proxy by the applicant, its management, or any other person for the meeting to vote on the plan of conversion shall be made by means of any ~~proxy statement, form of proxy, notice of meeting, or other communication,~~ written or oral, containing any ~~statement which,~~ language, which at the time and in the light of the circumstances ~~under which that~~ it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the meeting which has become false or misleading.

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

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

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

*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

04 NCAC 16G .0516 is amended as published in 31:23 2299 as follows:

### **04 NCAC 16G .0516      PROHIBITION OF CERTAIN SOLICITATIONS**

No person soliciting a proxy from a member for the meeting to vote on the plan of conversion shall solicit:

- (1) any ~~updated~~ undated or post-dated proxy; ~~or~~
- (2) any proxy ~~which~~ that provides that it shall be deemed to be dated as of any date subsequent to the date ~~on which~~ that it is signed by the ~~members; or~~ member;
- (3) any proxy ~~which~~ that is not revocable at will by the member giving it; or
- (4) any proxy ~~which~~ that is part of any other document or instrument, such as an account card.

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

## Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16G .0606 - .0608 are repealed as published in 31:23 NCR 2299 as follows:

2

3 **04 NCAC 16G .0606 VOTE AT MEMBERS MEETING**

4 **04 NCAC 16G .0607 NOTICE TO MEMBERS**

5 **04 NCAC 16G .0608 ELECTIVE NOTICE TO NON-VOTING ACCOUNT HOLDERS**

6

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

8 *Eff. February 15, 1992.*

9 *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0712

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4, should the term "made" have been deleted? Please review and clarify*

*Line 8, delete "The provisions"*

*Line 8, capitalize "this"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

~~(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 plan of conversion, an interim financial statement as of a date within 135 days of such approval shall be furnished. This interim financial statement shall be at least as current as the most recent quarterly financial statement filed with the administrator. This interim financial statement may be unaudited.~~

*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

04 NCAC 16G .0713 is amended as published in 31:23 2299 as follows:

### **04 NCAC 16G .0713        DISTRIBUTION OF OFFERING MATERIALS**

Any preliminary offering circular ~~which~~ that has been filed with the ~~administrator~~ Commissioner of Banks may be distributed in connection with the offering at the same time as or after the proxy statement is mailed to ~~members pursuant to Rule .0607 of this Subchapter.~~ members. No final offering circular shall be distributed until it has been ~~declared effective~~ approved by the ~~administrator.~~ Commissioner of Banks. The ~~declaration of the effectiveness~~ approval of the final offering circular by the ~~administrator~~ Commissioner of Banks shall not extend beyond the maximum time period specified for the completion of the sale of all the capital ~~stock in stock,~~ pursuant to Rule .0720 of this Section, or beyond ~~such~~ the period of time the ~~administrator~~ Commissioner of Banks shall establish upon a subsequent declaration of effectiveness in the event of the granting of an extension of time ~~under~~ pursuant to Rule .0722 of this Section.

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

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

*Amended Eff. November 1, 2017.*



## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16G .0714 is repealed as published in 31:23 NCR 2299 as follows:

2

3 **04 NCAC 16G .0714 ESTIMATED PRICE INFORMATION: PROXY STATEMENTS**

4

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

6 *Eff. February 15, 1992.*

7 *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0715

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*What is this Rule addressing? Who is making the representations and where? Consider addressing the clause "in any manner" to help identify the who and the what of this sentence. Please clarify*

*If lines 8 through 11 represents a list of items, then add a comma after "Commissioner of Banks" on line 9*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

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

*Amended Eff. November 1, 2017.*

## Permanent Repeal for Publication in the NCAC

1     04 NCAC 16G .0716 is repealed as published in 31:23 NCR 2300 as follows:

2

3     **04 NCAC 16G .0716            UNDERWRITING EXPENSES**

4

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

6                         *Eff. February 15, 1992.*

7                         *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0717

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Lines 6 thru 7, who is making the determination of "experienced and expert"? Please clarify*

*Line 9, what is meant by "therein"? Please delete or clarify*

*Line 26, when does the Commission permissibly request the additional information? What are the triggers? Consider cross-referencing another rule or statute to clarify the process*

*Line 26, delete the comma after "including"*

*Line 26, delete "without limitation,"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

- (1) ~~The~~ the materials shall be prepared by persons independent of the applicant who are experienced and expert in the area of corporate ~~appraisal.~~ appraisal;
- (2) ~~The~~ the materials shall contain a brief summary of data that is sufficient to support the conclusions reached ~~therein.~~ therein; and
- (3) ~~To~~ to the extent that the appraisal is based on the capitalization of the pro forma income of the converted savings bank, the materials ~~must~~ shall indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on a comparison of the capital stock of the applicant with the outstanding capital stock of existing stock savings banks, the existing stock savings banks ~~must~~ shall be ~~reasonably~~ comparable to the applicant in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.

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

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

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0718

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 12, delete the comma after "offering"*

*Line 12, delete the clause "as the case may be,"*

*Line 19, what is meant by "magnitude of the difference"? Is there a defined scale? Please clarify*

*Line 20, add a comma after "proxies"*

*Line 20, delete the "or" after "proxies"*

*Line 20, add a comma after "order forms"*

*Page 2, line 2, the proper term was "may" but this Rule needs to clarify when a penalty may or may not be applicable. Alternatively, if there is no penalty and this is not a permissive standard, then use "shall" to clarify Please review and clarify*

*Page 2, line 13, replace "may" with "shall" in the clause "it may not be modified" or clarify the factors considered by the use of the permissive "may" in this clause. Please review and clarify*

*Page 2, line 15, delete the comma after "may"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel

Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

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

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

- (1) indicate the maximum number of shares ~~which~~ that may be purchased pursuant to the subscription offering;
- (2) indicate the period of time ~~within which~~ that the subscription rights must be exercised, which ~~period of time~~ shall not be less than 20 days and no more than 45 days following the date of the mailing of the subscription offering order form;
- (3) state the maximum subscription price per share of capital stock;
- (4) indicate any requirements as to the minimum number of shares of capital stock ~~which~~ that must be purchased;
- (5) provide a ~~specifically~~ designated blank space or spaces for indicating the number of shares of capital 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  
11 end of the subscription period. The order form may, and the set of instructions shall, indicate the place  
12 or places ~~to which~~ that the order forms are to be returned and when the order forms shall be deemed to  
13 be received.
- 14 (e) The order form may provide that it may not be modified without the applicant's consent after the order form has been  
15 returned to the applicant. If payment is to be made by withdrawal from a deposit account or certificate of deposit, the  
16 applicant 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 Repeal for Publication in the NCAC

1     04 NCAC 16G .0719 is repealed as published in 31:23 NCR 2301 as follows:

2

3     **04 NCAC 16G .0719        WITHDRAWAL FROM CERTIFICATE ACCOUNTS**

4

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

6                        *Eff. February 15, 1992.*

7                        *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0720

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 8, add the clause "of this Section" as it was published in the Register.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

*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

04 NCAC 16G .0722 is amended as published in 31:23 2301 as follows:

### **04 NCAC 16G .0722        EXTENSIONS OF TIME TO COMPLETE OFFERINGS**

(a) The ~~administrator~~ applicant may request and the Commissioner of Banks may grant one or more extensions of time required to complete the sale of all shares of capital ~~stock under~~ stock, pursuant to Rule .0720 of this Section, provided that no single extension of time shall exceed 90 days. No ~~such~~ extension shall be granted unless the savings institution shows that the circumstances leading to the request for an extension were beyond the control of the savings institution and that the investors who purchased stock during the initial subscription period will not be disadvantaged by the extension.

(b) ~~Immediately upon the~~ Upon granting of an extension of time pursuant to Paragraph (a) of this Rule, the applicant shall distribute to each subscriber in the ~~offering, offering~~ and, if applicable, to each person who has ordered stock in the direct community ~~offering, offering~~ a post-effective amendment to the offering circular filed under an amendment to the application for conversion and ~~declared effective~~ approved by the ~~administrator~~ Commissioner of Banks pursuant to Paragraph (d) of this ~~Rule which Rule.~~ The applicant shall notify each subscriber and each ordering person of the ~~granting of the~~ extension of ~~time, time~~ and of the right of each subscriber and each ordering person to increase, decrease, or rescind ~~his~~ their subscription ~~either~~ at any time prior to 20 days before the end of the extension period or at any time prior to the date of the commencement of the public offering or the direct community offering, provided that ~~if the public offering or the direct community offering is not completed within 20 days after its commencement, all commencement.~~ All instructions from subscribers and ordering persons to increase, ~~decrease decrease,~~ or rescind their subscriptions or orders received during the 20-day offering period shall be honored by the applicant.

(c) For the purpose of this Rule, the public offering shall be deemed to commence upon the filing with the ~~administrator~~ Commissioner of Banks of the preliminary offering circular for the public offering. The direct community offering shall be deemed to commence upon ~~the declaration of effectiveness~~ approval by the ~~administrator~~ Commissioner of Banks of the final offering circular.

(d) After the expiration of the subscription rights, the converting savings ~~bank~~ institution shall file with and have ~~declared effective~~ approved by the ~~administrator~~ Commissioner of Banks a post-effective amendment to the offering circular upon the occurrence of any event, circumstance, or change of circumstance ~~which that~~ would be material to the investment decision of a subscriber or, if applicable, a person who has ordered capital stock in the direct community offering.

(e) Any post-effective amendment to an offering circular shall be distributed by the converting savings ~~bank~~ institution ~~immediately~~ within two business days after ~~the declaration of effectiveness.~~ approval. It shall be distributed to each subscriber, and, if applicable, each person who has ordered stock in the direct community offering. The converting savings ~~bank~~ institution shall grant to each subscriber and ordering person the right to increase, decrease, or rescind ~~his~~ their subscription or order for a period which shall be the greater of 10 days from the date of the mailing of the post-effective amendment or the period remaining in an extension of time granted by the ~~administrator~~ Commissioner of Banks pursuant to the provisions of Paragraph (b) of this Rule.

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

## Permanent Repeal for Publication in the NCAC

1 04 NCAC 16G .0822 is repealed as published in 31:23 NCR 2302 as follows:

2

3 **04 NCAC 16G .0822 IMPROPERLY EXECUTED OR MATERIALLY INCOMPLETE**  
4 **FILINGS**

5

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

7 *Eff. February 15, 1992.*

8 *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16G .0823

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Lines 12 and 13, delete "such"*

*Lines 19 and 21, what is meant by "state"? If it means "North Carolina," then capitalize "state" to clarify*

*Lines 26 thru 28, what is the purpose of this sentence? Is it not duplicative of the requirements set forth in Rules .0513(a) and .0712 of this Section? The duplication in this Rule seems unnecessary. Please consider deleting.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017



## Permanent Amendment for Publication in the NCAC

04 NCAC 16G .0823 is amended 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 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 and federal law and regulation;
  - (b) all requirements of 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.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16G .0824 - .0829 are repealed as published in 31:23 NCR 2302 as follows:

2

3 **04 NCAC 16G .0824 APPLICATION SIGNATURES**

4 **04 NCAC 16G .0825 REQUIREMENTS AS TO PAPER AND PRINTING**

5 **04 NCAC 16G .0826 METHOD OF PREPARATION**

6 **04 NCAC 16G .0827 INFORMATION UNKNOWN OR NOT REASONABLY AVAILABLE**

7 **04 NCAC 16G .0828 INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

8 **04 NCAC 16G .0829 PRESENTATION OF INFORMATION**

9

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

11 *Eff. February 15, 1992.*

12 *Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16G .0830 - .0833 are repealed as published in 31:23 NCR 2302 as follows:

2

3 **04 NCAC 16G .0830      CONSENT OF EXPERTS**

4 **04 NCAC 16G .0831      CONSENT OF PERSONS ABOUT TO BECOME DIRECTORS**

5 **04 NCAC 16G .0832      AMENDMENTS**

6 **04 NCAC 16G .0833      POST-CONVERSION REPORTS**

7

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

9 *Eff. February 15, 1992.*

10 *Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16G .0908 - .0912 are repealed as published in 31:23 NCR 2302 as follows:

2

3 **04 NCAC 16G .0908      DEFINITIONS**

4 **04 NCAC 16G .0909      PROHIBITED TRANSFERS**

5 **04 NCAC 16G .0910      PROHIBITION OF OFFERS AND CERTAIN ACQUISITIONS**

6 **04 NCAC 16G .0911      EXCEPTIONS**

7 **04 NCAC 16G .0912      CRITERIA FOR DENIAL**

8

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

10 *Eff. February 15, 1992.*

11 *Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16G .1203 - .1204 are repealed as published in 31:23 NCR 2302 as follows:

2

3 **04 NCAC 16G .1203      CONVERSION IN CONNECTION WITH ACQUISITION**

4 **04 NCAC 16G .1204      CONVERSION IN CONNECTION WITH MERGER**

5

6 *History Note:      Authority G.S. 54C-33; 54C-53; 54C-195;*

7 *Eff. February 15, 1992.*

8 *Amended Eff. April 15, ~~1993~~ 1993;*

9 *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16H .0101

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4, consider tracking the language in Rule 16G .0103 for consistency, as follows:*

*"As used in this Subchapter, the words and phrases defined by G.S. 54C-4 and the following definitions apply:*

*Line 5, add a comma after "merging"*

*Line 7, this definition states that the term means a "supervisory acquisition" as mentioned in two statutes, but neither of the referenced statutes include the term "acquisition." Please review and clarify the definition.*

*Lines 11 thru 12, the term being defined here is already defined in G.S. 54B-4(40) and 54C-4(23). The Rule should not be changing statutorily set definition. Considering the suggested technical change to line 4, consider simply deleting this definition*

*Line 11, if this definition remains, add a comma after "conditions"*

*Line 14, add a comma after "conditions"*

*Line 22, add a comma after "conditions"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

### **04 NCAC 16H .0101      DEFINITIONS**

As used in this Subchapter, unless the context otherwise requires, the term:

- (1) "Savings institution" ~~means~~ shall mean all savings institutions converting, merging or consolidating pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (2) "Consolidation" ~~means~~ shall mean a supervisory acquisition pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (3) "Merger" ~~means~~ shall mean a supervisory merger pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (4) "Plan of conversion" ~~means~~ shall mean a detailed outline of the terms, conditions and procedure of the short form conversion of a savings institution from mutual to stock form of ownership.
- (5) "Plan of merger" or "plan of consolidation" ~~means~~ shall mean a detailed outline of the terms, conditions and procedure of combining one savings institution, by merger or consolidation, with another savings institution.
- (6) "Short form conversion" ~~means~~ shall mean a supervisory conversion of a savings institution from mutual to stock form of ownership, pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (7) "Combination merger and conversion" ~~means~~ shall mean a supervisory conversion of a savings institution from mutual to stock form of ownership combined with a supervisory merger, pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (8) "Plan of combination merger and conversion" ~~means~~ shall mean a detailed outline of the terms, conditions and procedures of the short form conversion of a savings institution from mutual to stock form of ownership and combining the savings institution, by merger, with another savings institution.

*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-44; 54C-45;*

*Eff. December 1, 1981;*

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16H .0103

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:  
Line

*Line 6, are the actions "authorize or require"? Are both options or should be either "authorize" or "require"? Please review and clarify if necessary*

*Line 6, considering changes made in other rules, should the term "Board of Directors" be uncapitalized? Please review and clarify if necessary*

*Lines 8 thru 9, is the use of "may" and "shall" in the correct order? Should it be "The Commissioner of Banks ~~may~~ shall specify provisions ~~which that shall may~~..."? In the current form, it looks as though the Commissioner of Banks is exercising a discretionary action that results in a mandatory action by the Board of Directors. If that is correct, then clarify when the Commissioner of Banks will exercise this discretionary power.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017



## Permanent Amendment for Publication in the NCAC

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

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

The ~~Administrator~~ Commissioner of Banks shall give written notice to the Board of Directors of a savings institution ~~as 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 ~~such~~ the finding and shall authorize or require the Board of Directors to adopt a plan of conversion, a plan of merger or consolidation, a plan of combination merger and ~~conversion with another savings institution~~ conversion, or any other action specified by the ~~Administrator~~ Commissioner of Banks. The ~~Administrator~~ Commissioner of Banks may specify provisions ~~which~~ that shall be included in the plan.

*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-44; 54C-45;*  
*Eff. December 1, 1981;*  
*Amended Eff. November 1, 2017; February 15, 1992; November 1, 1985; October 1, 1982.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16H .0104

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4, what is meant by "such time"? Please clarify*

*Line 4, if the language remains, replace "such" with "the"*

*Lines 5 thru 6, are the actions "authorized or required"? Are both options or should be either "authorized" or "required"? Please review and clarify if necessary*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

*Eff. December 1, 1981;*

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16H .0105

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 6, what is the purpose of the clause "as the Commissioner of Banks deems appropriate"? Consider deleting this language. If the language remains, clarify what is meant by the clause "deems appropriate."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

*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-44; 54C-45;*  
*Eff. December 1, 1981;*  
*Amended Eff. November 1, 2017; February 15, 1992; November 1, 1985; October 1, 1982.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

04 NCAC 16H .0106 - .0107 are repealed as published in 31:23 NCR 2303 as follows:

**04 NCAC 16H .0106      SHORT FORM MUTUAL TO STOCK CONVERSION**

**04 NCAC 16H .0107      LIQUIDATION ACCOUNT**

*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-44; 54C-45;*

*Eff. December 1, 1981;*

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

*Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16H .0108

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*For this Rule, please note that [G.S. 150B-19\(6\)](#) restricts an agency from waiving a rule unless specific guidelines are set. Is the purpose of the language on lines 5 thru 7 to clarify what is considered in determining whether to grant a waiver or modification of a rule? Please review and clarify if necessary.*

*For purposes of requesting a waiver, what are the procedural requirements, such as any timing constraints or requirements to be in writing? Are these standards defined in another rule or statute that could be cross-referenced? Please clarify.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

04 NCAC 16H .0108 is amended as published in 31:23 2303 as follows:

### **04 NCAC 16H .0108      WAIVER**

The ~~Administrator~~ Commissioner of Banks may waive or alter any requirements set forth in this Subchapter to promote the best interests of the public or the savings institution by assuring the safe and sound operation of the savings ~~institution;~~ institution or when the application of any rule would have an unintended negative impact upon the public or a savings institution.

*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-44; 54C-45;*  
*Eff. December 1, 1981;*  
*Amended Eff. November 1, 2017; February 15, 1992.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .0702

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4, consider tracking the language in Rule 16G .0103 for consistency, as follows:*

*"As used in this Subchapter, the words and phrases defined by G.S. 54C-4 and the following definitions apply:*

*Lines 13 thru 15, why does the definition of "person" differ in this Section of rules from "person" in 16G .0103(17)? Please review and clarify*

*Line 21, delete the comma after "that"*

*Line 22, delete the clause "Commissioner of Banks" as it appears to be an extraneous clause*

*Lines 26 thru 27, the defined terms should be in alphabetical order, so please move this language up before "person"*

*Line 26 uses the terms "directly" or "indirectly" Are the use of the terms in these definitions known to the regulated public? If not, please clarify*

*Line 30, what is meant by "state"? If it means "North Carolina," then capitalize "state" to clarify*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

04 NCAC 16I .0702 is amended 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:

- (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.~~
- ~~(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) "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, ~~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) "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 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;*  
*Eff. July 1, 1983;*  
*Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990; November 1, 1985.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .0703

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 13, uncapitalize "Whether"*

*Line 19 uses the term "common controller" Is the use of the term in this Rule known to the regulated public? If not, please clarify*

*Line 34, consider adding 53-227.1 to the statutory authority for this Rule*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

04 NCAC 16I .0703 is amended 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 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. 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 Repeal for Publication in the NCAC

04 NCAC 16I .0704 is repealed as published in 31:23 NCR 2304 as follows:

### **04 NCAC 16I .0704 INVESTMENT ACTIVITIES OF HOLDING COMPANIES**

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .0801

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 5 references an "application." [G.S. 150B-2\(8a\)d](#) does not require an application to be a rule if "the contents or substantive requirements of which are prescribed by rule or statute." Is there a rule or statute that provides the information required in the application? Could it be cross-referenced? Please clarify.*

*Line 6, delete the clause "Commissioner of Banks" as it appears to be an extraneous clause*

*Line 7, what is meant by "thereto"? Please clarify or consider deleting*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

(a) A person or holding company shall not acquire control of any savings institution without having filed with the ~~Administrator~~ Commissioner of Banks an ~~Acquisition Application~~ application as prescribed by the ~~Administrator~~, Commissioner of Banks, and without the written approval of the ~~Administrator~~ Commissioner of Banks after consideration of the application and any amendments thereto.

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

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .0802

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4 references an "application." [G.S. 150B-2\(8a\)d](#) does not require an application to be a rule if "the contents or substantive requirements of which are prescribed by rule or statute." Is there a rule or statute that provides the information required in the application? Could it be cross-referenced? Please clarify.*

*Line 6 creates a cross-reference to a fee rule. However, looking at that Rule and simple term of "application" as used in this Rule, which fee is being applied? Please clarify.*

*Line 6, replace "is" with "shall be"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017



## Permanent Amendment for Publication in the NCAC

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

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

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

*History Note:      Authority G.S. 54B-55; 54B-57; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;*  
*Eff. July 1, 1983;*  
*Amended Eff. November 1, 2017; July 1, 1990; August 1, 1984.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .0803

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*For this Rule, where is the authority to deem these records confidential? Is this language not contrary to G.S. 54B-63(c) and 54C-60(c), as it specifically states the "information contained in an application is deemed to be public information"? Is it that the Commission is merely seeking a recommendation from the applicant, and then will separately make a determination? Is so, then consider re-writing to indicate that the applicant "may request" that the information be confidential" by some statutory protection other than G.S. 54B-63(c) and G.S. 54C-60(c) "as follows:" Please clarify. If the language needs to remain in this Rule, then update the statutory authority accordingly.*

*Line 12 thru 14, if this information is "confidential" and the language remains, then the clause beginning with "unless Commissioner of Banks is compelled..." should be deleted, as it is duplicative of G.s. 54B-63(b) and 54C-60(b) and is therefore unnecessary to this Rule.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

*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-63; 54B-63.1; 54B-261; 54B-262; 54C-53; 54C-60; 54C-195; 54C-196;*  
*Eff. July 1, 1983;*  
*Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .0901

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 6, as the document does not appear to be a specific name, uncapitalize "Application"*

*Line 6 references an "application." [G.S. 150B-2\(8a\)d](#) does not require an application to be a rule if "the contents or substantive requirements of which are prescribed by rule or statute." Is there a rule or statute that provides the information required in the application? Could it be cross-referenced? Please clarify.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .0902

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 6, add a period after "Reorganization"*

*Line 15, add "the" between "file publisher's*

*Line 15, when this language is compared with Rule 16G .0405, why is a "copy of the notice" not required to be filed in this Rule? Please review and address any consistency issues.*

*Lines 21 thru 23, please note that [G.S. 150B-19\(6\)](#) restricts an agency from waiving a rule unless specific guidelines are set. Is the purpose of this language to clarify what is considered in determining whether to grant a waiver or modification of a rule? Please review and clarify if necessary.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

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

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

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .1001

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 5 references an "application." [G.S. 150B-2\(8a\)d](#) does not require an application to be a rule if "the contents or substantive requirements of which are prescribed by rule or statute." Is there a rule or statute that provides the information required in the application? Could it be cross-referenced? Please clarify.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017



## Permanent Amendment for Publication in the NCAC

04 NCAC 16I .1001 is amended as published in 31:23 2305 as follows:

**04 NCAC 16I .1001        ~~REQUIRED ACQUISITION APPLICATIONS~~ APPLICATION**

A person seeking to acquire control of any stock savings institution shall file with the ~~Administrator~~ Commissioner of Banks one ~~manually signed~~ executed copy of an ~~Acquisition Application~~ application.

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .1002

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 8, what is meant by "this"? Should the term be "compliance"? Please review and clarify.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

(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 executed instrument filed with the Administrator, constitute as its true and lawful attorney the Secretary of State and his successors in office, or some other competent resident of this State, upon whom all original process in any action or legal proceedings against it may be served, and therein shall agree that any original process against it which may be served upon the Secretary of State or other competent person, shall be of the same force and validity as if served on the person, and the authority thereof shall continue in force irrevocable so long as the person continues to control a state savings institution.~~

*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; 54C-53; 54C-195; 54C-196;*  
*Eff. July 1, 1983;*  
*Amended Eff. November 1, 2017; February 15, 1992; September 1, 1983.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .1003

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4 references an "application." [G.S. 150B-2\(8a\)d](#) does not require an application to be a rule if "the contents or substantive requirements of which are prescribed by rule or statute." Is there a rule or statute that provides the information required in the application? Could it be cross-referenced? Please clarify.*

*Line 4, please delete the second "is" to be consistent with Rule .1302, line 4*

*Line 5, consider replacing "consider its approval" with "process the application" to be consistent with Rule .1302, line 5*

*Line 10, add "The" before "Notice" to be consistent with Rule .1302, line 9*

*Line 10, uncapitalize "Notice"*

*Line 10 thru 11, what is meant by "as conditions of approval"? Makes it appears a second review is conducted and the approval is discretionary within the Commissioner of Banks. Alternatively, why does this language not track the language in Rule .1302, line 11? Please clarify.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

(b) If the ~~Administrator~~ Commissioner of Banks approves the application, the applicant shall be notified. ~~Such notice~~ Notice shall include any requirements or stipulations the ~~Administrator~~ Commissioner of Banks may make as conditions of approval.

*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;*  
*Eff. July 1, 1983;*  
*Amended Eff. November 1, 2017; February 15, 1992; July 1, 1990; June 1, 1988.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .1101

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 7, why is "53-227" added to this history note? It is not reflected in the existing language in the [Administrative Code](#). Please delete the citation.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Repeal for Publication in the NCAC

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

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

*History Note: Filed as a Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on  
March 31, 1992;  
Authority G.S. 53-227; 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;  
Eff. July 1, 1983;  
Amended Eff. February 15, 1992; July 1, 1990; November 1, 1985.  
Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .1102

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 6, who is the "registrant"? Is it the "officers, directors, and employees"? Please clarify*

*Line 7, who is the providing the "examination"? Please clarify.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017



## Permanent Amendment for Publication in the NCAC

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

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

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

(b) Each registrant shall be subject to ~~such examinations~~ examination, ~~as the Administrator may prescribe~~. The cost of ~~such examinations~~ examination shall be ~~assessed against and~~ paid by ~~such~~ the registrant.

*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-57; 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 .1103 is amended as published in 31:23 2306 as follows:

2

3 **04 NCAC 16I .1103 ANNUAL REPORTS**

4 Each registrant ~~will~~ shall file an annual report with the ~~Administrator in the specified form.~~ Commissioner of Banks. ~~In~~  
5 ~~addition to these, each registrant will file such interim reports as may be prescribed by the Administrator.~~

6

7 *History Note: Authority G.S. 54B-55; ~~43B-261~~; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196;*

8 *Eff. July 1, ~~1983~~. 1983;*

9 *Amended Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .1104

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 6, where is the statutory authority for the Commissioner of Banks to approve the articles of incorporation for a holding company, as that does not appear to a requirement set forth in Article 13 of G.S. 54B or Article 9 G.S. 54C. Please clarify the statutory authority*

*Line 6, if this language remains, add "or her" after "his"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

- (a) Prior to any filing with the Secretary of State of the State of North Carolina, a holding company ~~will~~ shall file with the ~~Administrator~~ Commissioner of Banks copies of any proposed amendment to its articles of incorporation. The ~~Administrator~~ Commissioner of Banks must give his approval to the content and form of ~~such~~ the proposed amendments.
- (b) Before any amendments to the bylaws of a holding company ~~can~~ shall become effective, a ~~certified~~ copy of ~~such~~ the amendments shall be filed with and approved by the ~~Administrator~~ Commissioner of Banks. ~~In the event of the failure of the Administrator to act upon the amendment within 25 days of receipt, the bylaws shall be deemed approved.~~

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .1105

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4 uses the term "simultaneously" Is the use of the term in this Rule known to the regulated public? If not, please clarify*

*Line 5, define or delete "appropriate"*

*Line 5, please clarify what is meant by "federal regulatory authority"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

*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;*

*Eff. July 1, 1983;*

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

## Permanent Repeal for Publication in the NCAC

04 NCAC 16I .1106 is repealed as published in 31:23 NCR 2306 as follows:

### **04 NCAC 16I .1106 BOOKS AND RECORDS**

*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;*  
*Eff. July 1, 1983;*  
*Amended Eff. February 15, 1992; July 1, 1990.*  
*Repealed Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

1 04 NCAC 16I .1201 - .1203 are repealed as published in 31:23 NCR 2307 as follows:

2

3 **04 NCAC 16I .1201       REQUIRED ACQUISITION APPLICATION**

4 **04 NCAC 16I .1202       CONVERSION PROCEDURE**

5 **04 NCAC 16I .1203       PLAN OF CONVERSION REQUIREMENTS**

6

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

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

10 *Eff. July 1, 1990;*

11 *Amended Eff. February 15, 1992.*

12 *Repealed Eff. November 1, 2017.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .1301

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 5 references an "application." [G.S. 150B-2\(8a\)d](#) does not require an application to be a rule if "the contents or substantive requirements of which are prescribed by rule or statute." Is there a rule or statute that provides the information required in the application? Could it be cross-referenced? Please clarify.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

04 NCAC 16I .1301 is amended as published in 31:23 2307 as follows:

### **04 NCAC 16I .1301        REQUIRED ACQUISITION APPLICATION**

A person seeking to acquire control of any holding company shall file with the ~~Administrator~~ Commissioner of Banks one ~~manually signed~~ executed copy of an ~~Acquisition Application~~. application.

*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-262; 54C-53; 54C-195;*

*Eff. July 1, 1990;*

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16I .1302

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4 references an "application." [G.S. 150B-2\(8a\)d](#) does not require an application to be a rule if "the contents or substantive requirements of which are prescribed by rule or statute." Is there a rule or statute that provides the information required in the application? Could it be cross-referenced? Please clarify.*

*Lines 13 thru 15, please note that [G.S. 150B-19\(6\)](#) restricts an agency from waiving a rule unless specific guidelines are set. Is the purpose of this language to clarify what is considered in determining whether to grant a waiver or modification of a rule? Please review and clarify if necessary.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

04 NCAC 16I .1302 is amended as published in 31:23 2307 as follows:

### **04 NCAC 16I .1302 ACQUISITION PROCEDURE**

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

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

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

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

*Eff. July 1, ~~1990~~ 1990;*

*Amended Eff. November 1, 2017.*

## Proposed Repeal of Consecutive Rules for Publication in the Register

04 NCAC 16J .0101 - .0103 are repealed as published in 31:23 NCR 2307 as follows:

**04 NCAC 16J .0101      MERGER OF A STATE INSTITUTION INTO A FEDERAL INSTITUTION**

**04 NCAC 16J .0102      MERGER OF A FEDERAL INSTITUTION INTO A STATE INSTITUTION**

**04 NCAC 16J .0103      WAIVER**

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

*Filed as a Temporary Rule Eff. July 30, 1982, for a period of 120 days to expire on November 26, 1982;*

*Statutory Authority G.S. 54B-39; 54C-39; 54C-53;*

*Eff. October 1, 1982;*

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

*Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16K .0101

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4, since this Subchapter of rules appears limited, there is no recommendation to track language like in Rules 16G .0103, 16H .0101, or 16I .0702. Please correct if that statement is incorrect.*

*Line 21, consider deleting the comma after "conservator"*

*Line 31, delete "of" after "who perform"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

For purposes of this Section:

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

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



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16K .0102

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Lines 5 and 8 references an "application." [G.S. 150B-2\(8a\)d](#) does not require an application to be a rule if "the contents or substantive requirements of which are prescribed by rule or statute." Is the content in Subparagraphs (b)(1)-(b)(4) set forth the required information in the application, or is there a rule or statute that provides the information required in the application? If Paragraph (b) is not the application content, could a rule or statute be cross-referenced? Please clarify.*

*Line 11, define or delete "appropriate"*

*Line 11, please clarify what is meant by "federal regulatory authority"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

- (1) the financial condition of the savings institution, provided that in no event shall trust powers be granted to a savings institution if its financial condition is such that the savings institution does not meet the requirements of the appropriate federal regulatory authority;
- (2) the general character and ability of the management of the savings institution;
- (3) the nature of the supervision to be given to the fiduciary activities, including the qualifications, ~~experience~~ experience, and character of the proposed officer or officers of the trust department; and
- (4) whether the savings institution has available legal counsel to advise and ~~pass upon~~ review fiduciary matters when necessary.

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

*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-77; 54C-53; 54C-146;*  
*Eff. November 1, 1982;*  
*Amended Eff. November 1, 2017; February 15, 1992.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16K .0103

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4 and line 6 has the term "has" Please delete the term in one of those locations.*

*Line 6, what is meant by "current and valid"? Please clarify, simply state "valid," or delete.*

*Line 9, add a line space between the rule text and the history note in accordance with [26 NCAC 02C .0108\(8\)\(b\)](#)*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

*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-77; 54C-53; 54C-146;*  
*Eff. November 1, 1982;*  
*Amended Eff. November 1, 2017; February 15, 1992.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16K .0104

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 5, delete "thereto"*

*Lines 7 and 17, replace "are" with "shall be"*

*Line 15, delete "thereafter"*

*Line 22, what "law" is being referred to by this term? Please clarify*

*Lines 23 thru 24, what "federal securities laws" are being referred to by this item? Please clarify*

*Line 26 uses the term "material inside information." Is the use of the term in this Rule known to the regulated public? If not, please clarify*

*Line 32, this language should be clarified to indicate that a document is being incorporated in accordance with [G.S. 150B-21.6](#). Add "which is hereby incorporated by reference" between "Management, and"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

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

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

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

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

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

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16K .0105

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Is the sentence on lines 5 thru 7 necessary considering the two sentences on lines 7 thru 9? Please review, as they appear to be duplicative.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017



## Permanent Amendment for Publication in the NCAC

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

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

(a) Every savings institution exercising trust powers shall keep its fiduciary records separate and distinct from other records of the savings institution. All fiduciary records shall be retained in a manner and for such time as is necessary to enable the savings institution to furnish any information or reports as may be required by the ~~Administrator~~ Commissioner of Banks. The fiduciary records shall contain full information relative to each account. The record retention schedule set forth in ~~4 NCAC 16D .0302 and 4 NCAC 16E .0302~~ 04 NCAC 03D .0303 shall apply to the fiduciary records of a savings institution exercising trust powers.

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

*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-77; 54C-53; 54C-146;*  
*Eff. November 1, 1982;*  
*Amended Eff. November 1, 2017; February 15, 1992.*

## Permanent Amendment for Publication in the NCAC

04 NCAC 16K .0106 is amended as published in 31:23 2309 as follows:

### **04 NCAC 16K .0106      AUDIT OF TRUST DEPARTMENT**

At least once during each calendar year, the savings institution's trust department shall be audited by independent auditors. A copy of the report of the audit shall be promptly filed with the ~~Administrator.~~ Commissioner of Banks.

*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-77; 54C-53; 54C-146;*

*Eff. November 1, 1982;*

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16K .0107

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 5, move the clause "unless prohibited by the instrument creating the trust" should be moved to the beginning of line 4.*

*Line 4, capitalize the moved "unless"*

*Line 4, uncapitalize "Funds"*

*Line 5, place a period after "institution"*

*Line 5, delete "provided"*

*Line 5, capitalize "the"*

*Line 7, place the periods in "GS" to reflect the language as published in the Register*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

(a) Funds held in trust by a savings institution, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust, be deposited in other departments of the savings institution, provided the savings institution shall first 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)~~ GS 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 the~~ funds are insured by an agency of the United States government.

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

*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-77; 54C-53; 54C-146;*

*Eff. November 1, 1982;*

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16K .0108

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 13, replace "Such" with "The"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

*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-77; 54C-53; 54C-146;  
Eff. November 1, 1982;  
Amended Eff. November 1, 2017; February 15, 1992.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16K .0109

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 4 says "to by court order" but line 19 only says "by court order" Consider deleting the "to" on line 4*

*Lines 9, 15, and 17, consider beginning these clauses with lowercase letters as they appear to be part of a list*

*Line 14, delete the "or" at the end of the clause*

*Line 15, provide the citation to the General Statutes as it was published in the Register. For purpose of this citation, the agency is not citing to the entire Article 14 of G.S. 53? What is included in the "et. seq" for this Rule? Please review*

*Line 17, clarify when it may be "required by the Commissioner of Banks"*

*Line 25, define or delete "actually"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

(2) As provided ~~the laws and regulations and regulations~~ N.C. General Statute s. 53-163.5, et seq. governing collective investment; or

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

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

*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-77; 54C-53; 54C-146;*  
*Eff. November 1, 1982;*  
*Amended Eff. November 1, 2017; February 15, 1992.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16K .0110

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Lines 4 and 10, should this language specify a "trust account" where the term "account" is used? Please review and clarify if necessary.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

- (1) kept separate from those of all other accounts, except as provided in Rule ~~.0012~~ .0112 of this Section;
- or
- (2) ~~adequately~~ identified as the property of the relevant account.

*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-77; 54C-53; 54C-146;*  
*Eff. November 1, 1982;*  
*Amended Eff. November 1, 2017; February 15, 1992.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16K .0111

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 6, how is "reasonable compensation" determined? Is there a standard? Consider cross-referencing another rule or statute to clarify the process*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

04 NCAC 16K .0111 is amended as published in 31:23 2310 as follows:

### **04 NCAC 16K .0111      COMPENSATION OF SAVINGS INSTITUTION**

(a) If the amount of the compensation for acting in a fiduciary capacity is not provided for in the instrument creating the fiduciary relationship, set forth in Chapter ~~36A~~ 32 of the General Statutes, or otherwise agreed to by the parties, a savings institution acting in such capacity may charge or deduct a reasonable compensation for its services. When the savings institution is acting in a fiduciary capacity under appointment by a court, it shall receive ~~such~~ compensation as may be allowed or approved by the court.

(b) No savings institution shall, ~~except with the specific approval of its Board of Directors,~~ permit any of its officers or employees, while serving as such, ~~to retain any compensation for acting~~ to act as co-fiduciary with the savings institution in the administration of any account undertaken by it.

(c) No savings institution shall permit an officer or employee engaged in the operation of its trust department to accept a bequest or gift of trust assets unless the bequest or gift is directed or made by a relative of the officer or employee or is approved by the Board of Directors of the savings institution.

*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-77; 54C-53; 54C-146;*

*Eff. November 1, 1982;*

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16K .0112

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Lines 5 and 9, consider beginning these clauses with lowercase letters as they appear to be part of a list.*

*Line 9, what is the change between "~~bonus~~ bonus" Was the intent to add a comma after the second "bonus"? Please review and clarify*

*Line 13, replace the semicolon after "9.18" with a comma*

*Line 13, this language should be clarified to indicate that a document is being incorporated in accordance with [G.S. 150B-21.6](#). Add "which is hereby incorporated by reference" between "9.18, and"*

*Lines 14 thru 16, create a new sentence to clarify that there is a requirement to file these documents with the Commissioner of Banks. Consider the following:*

*"material. Any documents filed with the Comptroller of the Currency pursuant to 12 C.F.R. 9.18 shall also be filed with the Commissioner of Banks."*

*Based upon that suggested re-write, move the location information from lines 16 thru 19 to be between "material. Any documents..."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

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

(b) Collective investments of funds or other property by a savings institution under Paragraph (a) of this Rule shall be administered in accordance with Comptroller of the Currency Regulation 9.18, 12 C.F.R. 9.18; and shall include any later amendments and editions of the referenced material, provided that any documents required to be filed with the Comptroller of the Currency under that regulation shall ~~also~~ be filed with the ~~Administrator who may review such documents for compliance with all applicable laws and regulations.~~ Commissioner of Banks. This information is available at the U.S. Printing Office website at [http://www.ecfr.gov/cgi-bin/text-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) at no cost.

*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-77; 54C-53; 54C-146;  
Eff. November 1, 1982;  
Amended Eff. November 1, 2017; February 15, 1992.

## Proposed Repeal of Consecutive Rules for Publication in the Register

04 NCAC 16K .0113 - .0116 are repealed as published in 31:23 NCR 2310 as follows:

**04 NCAC 16K .0113      SURRENDER OF TRUST POWERS**

**04 NCAC 16K .0114      EFF. OF APPT.: CONSERVATOR/RECEIVER: VOLUNTARY  
DISSOLUTION**

**04 NCAC 16K .0115      REVOCATION OF TRUST POWERS**

**04 NCAC 16K .0116      APPLICABILITY OF GENERAL LAWS REGARDING TRUST  
OPERATIONS**

*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-77; 54C-53; 54C-146;  
Eff. November 1, 1982;  
Amended Eff. February 15, 1992.  
Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16K .0117

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 5, please clarify the use of "may" for when the Commissioner would require the reports. How is this determination made? Consider cross-referencing another rule or statute to clarify the process*

*Line 5, define or delete the clause "from time to time"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017



## Permanent Amendment for Publication in the NCAC

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

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

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

*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-57; 54B-77; 54C-53; 54C-55; 54C-146;*  
*Eff. November 1, 1982;*  
*Amended Eff. November 1, 2017; February 15, 1992.*

## Permanent Repeal for Publication in the NCAC

1     04 NCAC 16L .0101 is repealed as published in 31:23 NCR 2310 as follows:

2

3     **04 NCAC 16L .0101        PLAN OF LIQUIDATION**

4

5     *History Note:*     *Authority G.S. 54B-42; 54B-55; 54C-42; 54C-53;*

6                         *Eff. October 1, 1987.*

7                         *Repealed Eff. November 1, 2017.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16L .0102

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 5, is the citation to G.S. 54C-41 correct? Or should it be 54C-42 to mirror the citation to G.S. 54B-41? Please review and clarify*

*Line 5, regardless of the correct citation within 54C, add the "G.S." before the citation to reflect the language as published in the Register*

*Line 9 of this Rule is requiring publication. However, the text in Rules 16G .0405 and 16I .0902 requires certain information regarding publication to be provided to the Commissioner of Banks. There is no requirement for that information to be provided in this Rule. Is that accurate? Please review and clarify if necessary*

*Line 21, delete the blank line*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

(1) collect its assets;

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

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

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

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

*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-42; 54B-55; 54C-42; 54C-53;*  
*Eff. October 1, 1987;*  
*Amended Eff. November 1, 2017; February 15, 1992.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16L .0103

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 7, considering the proposed changes of the agency and the technical change request for Rule .0102 of this Section, please verify the statutory citations set forth in this Rule.*

*Line 9, replace "again" with "to"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

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

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

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

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

*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-42; 54B-55; 54C-42; 54C-53;*  
*Eff. October 1, 1987;*  
*Amended Eff. November 1, 2017; February 15, 1992.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 16L .0104

**DEADLINE FOR RECEIPT: Friday, October 13, 2017**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*For this Rule, please note that [G.S. 150B-19\(6\)](#) restricts an agency from waiving a rule unless specific guidelines are set. Is the purpose of the language on lines 5 thru 6 to clarify what is considered in determining whether to grant a waiver or modification of a rule? Please review and clarify if necessary.*

*For purposes of requesting a waiver, what are the procedural requirements, such as any timing constraints or requirements to be in writing? Are these standards defined in another rule or statute that could be cross-referenced? Please clarify.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Friday, September 29, 2017

## Permanent Amendment for Publication in the NCAC

04 NCAC 16L .0104 is amended as published in 31:23 2311 as follows:

### **04 NCAC 16L .0104      WAIVER**

The ~~Administrator~~ Commissioner of Banks may waive or alter any requirements set forth in this Section to promote the best interests of the public or the savings institution by assuring the safe and sound operation of the savings institution, or when the application of any rule would have an unintended negative impact upon the public or a savings institution.

*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-42; 54B-55; 54C-42; 54C-53;  
Eff. October 1, 1987;  
Amended Eff. November 1, 2017; February 15, 1992.*