



COMMISSIONER OF FINANCIAL INSTITUTIONS
GOVERNMENT OF PUERTO RICO

September 29, 1995

CIRCULAR LETTER NUMBER 95-96-D-55-2

TO: ALL PERSONS INTERESTED IN THE TENOR OF THE BANKING LAW OF PUERTO RICO ON MATTERS PERTAINING TO INTERSTATE BANKING AND BRANCHING.

FROM: JOSEPH P. O'NEILL
COMMISSIONER **APPROVED**

MATTER Official interpretation of Law Number 55 of May 12, 1933, as amended, known as the "Banking Law of Puerto Rico" in light of certain provisions of the federal "Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994".

Section 1- Statutory Authority

This circular letter is issued pursuant to the provisions of Law Number 4 enacted on October 11, 1985, as amended, known as the "Office of the Commissioner of Financial Institutions Act"¹ and Section 28(b) (the "Banking Act") of Law 55 of May 12, 1933, as amended, known as the "Banking Law of Puerto Rico"².

Section 2- Purpose

The purpose of this circular letter is to declare and publish this Office's interpretation of certain provisions of the Banking Act in light of recent changes effected in the federal law governing issues of interstate banking and branching. Further, to record that this Circular Letter

¹ 7 LPRA §2001 *et seq.*

² 7 LPRA § 1, *et seq.*



shall have the same force and effect of "opting-in" under the Riegle-Neal Act . This letter shall serve to signify Puerto Rico's intent of participating, as if were a State of the Union, in the federal policy fostering interstate banking and branching.

This Office reiterates its interest in providing a regulatory framework which fosters Puerto Rico's role as a significant center for financial services convenient both to institutions operating in the United States and foreign financial institutions. This circular letter documents the existence, since 1933, of statutory provisions allowing for interstate banking and branching.

This declaration of policy should be circulated to the Commissioner or State bank regulators of the United States and other U.S. territories and possessions in order to ensure widespread awareness of this Office's policy in regard to interstate banking and branching, as discussed below.

Section 3- Guide for interpretation of the Banking Act.

(a) **Background.**

On September 29, 1994, the United States Congress enacted a law titled "Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994"³ ("Riegle-Neal"). This act constitutes a benchmark in the banking law of the United States. Its main purpose is to eliminate state barriers⁴ to interstate banking by providing that, beginning on September 29, 1995, bank holding companies may acquire banks throughout the entire nation ["interstate banking"].

Riegle-Neal also provides for the establishment of branches throughout the entire nation ["interstate branching"] as of June 1, 1997. In the case of interstate branching, Riegle-Neal allows the States to opt to exclude ("opt-out") the establishment of interstate branches within the State, or to modify the authorization for such branches by including certain conditions precedent for the same.

(b) **The law in Puerto Rico.**

As explained below, in the case of Puerto Rico, both interstate banking and branching have been authorized by the Banking Act since its adoption in 1933.

Interstate banking:

³Public Law 103-328, September 29, 1994, 103rd Congress of the United States of America; 108 STAT.2338- 2381(1994).

⁴This is effected by repealing the "Douglas Amendment" to the Bank Holding Company Act, enacted in 1956, 12 U.S.C. §1842(d). In essence, The Douglas Amendment prohibited the acquisition of a bank by a bank holding company unless expressly authorized by the laws of the State of the target bank.



Section 12 of the Banking Act⁵ provides for, among other things, the acquisition of banks organized under the laws of Puerto Rico as follows:

(a) In the case of any transfer of voting and outstanding capital stock of any bank organized under the provisions of sections 1-204 of this title, to any person or entity (or more than one, acting in common accord) that upon consummation of the transfer, said person or entity should own, directly or indirectly, more than five (5) percent of the voting and outstanding capital stock of said bank, the parties to the transfer inform the details thereof to the [Commissioner of Financial Institutions of Puerto Rico] not less than sixty (60) days prior to the date said transfer is to be consummated. This transfer shall require the approval of the [Commissioner of Financial Institutions] if it results in a change of control of the bank. It is presumed that a change of control occurs when, as a result of the transfer, an acquirer (or acquirers acting in common accord) who, before said transfer did not directly or indirectly own more than five (5) percent of the voting and outstanding capital stock of said bank, should, directly or indirectly, own more than the stated percentage of said shares.

(b) For the purposes of this section, the term "control" means the power to, directly or indirectly, direct or influence decisively in the administration or the norms of the bank.

(c) The notice to the [Commissioner] shall contain information as to the number of shares of stock object of the operation, the name and address of the vendor (or assignor), and of the vendee (or assignee), the purchase price, the total number of shares owned by the vendor (or assignor) and by the vendee (or assignee), respectively, before making the proposed operation.

(d) It shall be the duty of the [Commissioner of


APPROVED

⁵7 LPRA §39.



Financial Institutions], as soon as he receives notice of a proposed operation that may result in the control or in a change in the control of a bank, to make the necessary investigations with respect: (1) to experience and moral and financial responsibility of the vendee (or assignee), (2) whether such experience and moral and financial responsibility warrant the efficient functioning of the bank and (3) whether the transfer of the control of the bank jeopardizes the interests of the depositors, creditors or stockholders of the bank.

(e) The [Commissioner of Financial Institutions] shall issue authorization for the transfer of control of a bank, if the result of his investigation is, in his judgment, satisfactory. The resolution of the [Commissioner of Financial Institutions] shall be final and unreviewable.

We hereby reiterate that this Office interprets Section 12 of the Banking Act, just cited, as authorizing the acquisition of a bank in Puerto Rico by a bank holding company incorporated or doing business in a place other than Puerto Rico as provided in that law.

APPROVED

Interstate branching:

Section 39⁶ of the Banking Act provides for the establishment of branches in Puerto Rico from banks organized in other States or countries as follows:

Hereafter any banking corporation organized under the laws of the United States, its territories, a State of the Union or any foreign country⁷, which operates a bank and does business at the place of its incorporation may do business and establish offices in Puerto Rico, provided that before beginning its operations in Puerto Rico, it files in the office of the Secretary of State of Puerto Rico a duly authenticated copy of its charter or articles of incorporation and a statement verified by oath of

⁶ LPRC §181.

⁷ The ratification by the U. S. Congress of the North America Free Trade Agreement ("NAFTA") signed by Canada, Mexico and the United States, has the effect of barring provisions which discriminate against banking institutions organized under the laws of the parties to the Treaty. Puerto Rico is bound by NAFTA.



the president, manager, agent, cashier, or other authorized officer of said bank, and attested to by a majority of its board of directors, showing:

- (a) The name of such bank;
- (b) The location of its existing or proposed main offices or places of business within and without Puerto Rico;
- (c) The object or objects of its business;
- (d) The amount of its authorized capital;
- (e) The amount of its capital stock actually paid in cash;
- (f) The amount of the assets of the bank, and of what they consist, and the actual cash value thereof;
- (g) An itemized statement of the liabilities of such bank; whether any of its indebtedness is secured, and if so, how secured;
- (h) The amount of capital to be devoted to its business in Puerto Rico, which in no case shall be less than one hundred thousand (100,000) dollars;
- (i) The name and post-office addresses of all the directors and officers of the bank, and the date when the term of office of each expires.

APPROVED

Such bank shall also file at the same time, in the office of the Secretary of State of Puerto Rico, a certificate, under the official seal of the bank and the signatures of its president, vice-president or other acting head, and its cashier, if there is one, certifying that the said bank has consented to be sued in the courts of Puerto Rico upon all causes of action arising against it in Puerto Rico, and that service of notice on the bank as defendant as well as any other judicial proceeding may be made on a given person, resident of Puerto Rico, whose name and place of residence shall be stated in such certificate; and such service of notice or other judicial proceeding, when so made upon such agent, shall be valid service on the said bank.



The written consent of the person so designated to act as such agent shall likewise be filed, and such designation shall remain in force until the filing in the same office or a written revocation thereof, executed in like manner, in which case some other person shall be designated to act as such agent.

A certified copy of a designation so filed, accompanied by a certificate that it has not been revoked, is presumptive evidence of the making of such designation and shall be conclusive evidence of the authority of the officer making it.

...

No foreign bank may open branches or change its location in Puerto Rico without first obtaining the written approval of the [Commissioner of Financial Institutions]. As soon as the [Commissioner of Financial Institutions] shall receive a written application from any foreign bank to open a branch or change its location, he shall make such investigations as he may deem necessary in order to ascertain whether the opening of such branch or change of location will be of public benefit, and whether the foreign bank has sufficient capital for the establishment of such branch...

APPROVED

We hereby reiterate that this Office interprets Section 39 of the Banking Act, just cited, as authorizing the establishment in Puerto Rico of branches from banking institutions organized under laws other than those of Puerto Rico, without any other conditions other than those included in the Banking Act.

Section 4- Effective date

The provisions of this circular letter shall be effective immediately after the date it is issued.

wmr