

Form 309—General Information
(Application for Registration of an Out-of-State Financial Institution)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

An out-of-state financial institution means a bank, savings bank, savings association, savings and loan association, credit union or trust company that is not chartered under the laws of this state and that has its main or principal office in another state. Section 201.102 of the Texas Finance Code requires an out-of-state financial institution to comply with the law of this state relating to foreign corporations transacting business in the state before operating a branch or other office in this state. The applicable law is the Texas Business Organizations Code (BOC). In this regard, the out-of-state financial institution is required to file an application for registration with the secretary of state and continuously maintain a registered agent and registered office address in Texas until the institution terminates or withdraws its registration to transact business in Texas. Should the out-of-state financial institution change its name as provided by the laws governing its formation, the institution will be required to file an amendment to its application for registration (Form 411).

Out-of-state institutions may be subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information on oversight by state agencies in Texas: banks and trust companies may contact the Texas Department of Banking, Corporate Activities Division, 2601 North Lamar Blvd., Austin, Texas 78705 (512) 475-1300; savings and loan associations may contact the Department of Savings and Mortgage Lending, 2601 North Lamar Blvd., Ste. 201, Austin, Texas 78705 (512) 475-1350; and credit unions may contact the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752 (512) 837-9236.

Instructions for Form

- **Item 1—Entity Name:** Provide the full legal name of the financial institution as stated in the institution's formation document.
- **Item 2—Federal Employer Identification Number:** Enter the financial institution's federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). If the financial institution has not received its FEIN at the time of submission, this should be noted in item 2 on the application form.
- **Item 3—Jurisdictional Information:** The application must state the financial institution's jurisdiction of formation and the date of its formation in the format shown in the application. If the entity is formed under federal law of the United States, indicate the jurisdiction as "United States."
- **Item 4—Institution Type:** The application must indicate the type of financial institution seeking to register. Choose only one type.

- **Item 5—Statement of Purpose:** The application must state each business or activity that the entity proposes to pursue in Texas, which may be stated to be “any lawful business or activity under the law of this state.” In addition, the application must contain a statement that the entity is authorized to pursue the same business or activity under the laws of the entity’s jurisdiction of formation.
- **Item 6—Certification of Existence:** The application must contain a statement that the financial institution exists as a valid financial institution of the stated type under the laws of the financial institution’s jurisdiction of formation.
- **Item 7—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 8—Initial Registered Agent and Registered Office:** A registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The financial institution cannot act as its own registered agent; do not enter the institution name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person’s written or electronic consent need not be submitted with the application for registration. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person’s consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity’s registered agent during normal business hours. Although the registered office is not required to be the entity’s principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Item 9—Governing Persons:** Provide the name and address of each person serving as part of the governing authority of the financial institution. Generally, this would be the board of directors or other group of persons who are entitled to manage and direct the affairs of the financial institution. A minimum of one governing person is required. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for directors or governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Effectiveness of Filing:** The application for registration becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the instrument to take effect under option C, the entity must, within ninety (90) days of the filing of the instrument, file a

statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity's registration will be shown as "in existence" on the records of the secretary of state.

- **Execution:** An officer of the financial institution must sign the application for registration.

The application for registration need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for an application for registration for a financial institution other than a credit union is **\$750**. The filing fee for a financial institution classified as a credit union is **\$25**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A registered foreign financial institution is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration. Failure to maintain a registered agent and registered office may result in the revocation of the financial institution's registration.

Revised 05/11