

March 29, 2022

Richard M. Bowen
State of New Hampshire Treasury
25 Capitol Street, Room 121
Concord, NH 03301

Re: Ability of New Hampshire-Chartered Bank to Accept Public Funds in New York under New York Banking Law

Dear Mr. Bowen,

Manufacturers and Traders Trust Company (“M&T”) is a New York state-chartered bank (“NY State Bank”) that is a member of the Federal Reserve System, the deposits of which are insured by the Federal Deposit Insurance Corporation. On February 22, 2021, M&T entered into an agreement to acquire via merger (the “Merger”) People’s United Bank (“PUB”), a national bank with branches in New Hampshire. The Merger is anticipated to close by the end of 2021. Currently, PUB holds public deposits in New Hampshire. As the surviving institution, M&T is seeking permission to accept public funds at the State, city, town and school district levels¹ (“Public Deposits”)² in New Hampshire.

Section I describes the relevant New Hampshire Law requirements pertaining to out-of-state banks that seek to accept NH Public Deposits. Section II explains why New York State permits a New Hampshire-chartered bank (a “NH State Bank”) to accept NY Public Deposits in the same manner as a NY State Bank, therefore satisfying the Equivalence Requirement (defined below) described in Section I.

I. New Hampshire Law; Equivalence Requirement

New Hampshire Revised Statutes Annotated, Sections 6:7, 6:8, 23:16, 29:1, 31:25, 31:26, 31:27, 31:36, 34:5, 35:9, 41:29, 48:16, 197:23-a (the “NH Public Deposit Statutes”)³ require that a bank, chartered in a state other than New Hampshire, with a branch in New Hampshire (a “Non-NH State Bank”), among other things, furnish to the New Hampshire state treasurer an opinion of legal counsel that the state in which the Non-NH State Bank is incorporated would

¹ See New Hampshire House Bill HB 545, available [here](#).

² Public funds from the New Hampshire State Treasurer or from a New Hampshire city, town or school district treasurer would be referred to as NH Public Deposits. Equivalent deposits for New York public funds would be referred to as NY Public Deposits.

³ See *supra* note 1.

permit a NH State Bank to accept NH Public Deposits of that state “in substantially the same manner and subject to substantially the same terms and conditions as is permitted for banks chartered in that state,” *i.e.*, that the other state does not discriminate against out-of-state banks, including NH State Banks (the “Equivalence Requirement”).

As applied to M&T, the relevant issue therefore is whether New York, the state in which M&T is chartered, would permit a bank chartered outside of New York with branches in New York (a “Non-NY State Bank”) to accept NY Public Deposits in substantially the same manner and subject to substantially the same terms and conditions as is permitted for a NY State Bank. As discussed in Section II below, we believe that there is a reasonable basis to conclude that New York law satisfies the Equivalence Requirement.

II. New York Law

Perhaps most fundamentally, consistent with the Equivalence Requirement, no provision in New York law differentiates between Non-NY State Banks and NY State Banks with respect to their ability to take NY Public Deposits. Moreover, as explained further in this Section, we do not believe the overall construction of New York law creates such a distinction and in practice, New York municipalities have in fact permitted Non-NY State Banks to take NY Public Deposits under this statutory framework.

Similar to New Hampshire law, the New York laws governing the deposits of public funds are not centralized in one section of the New York Consolidated Laws. Broadly speaking, however, these laws are can be bifurcated between those governing State funds, *i.e.*, moneys in possession, custody, control or under the authority of the New York Comptroller, the Commissioner of Taxation and Finance or other State officer and funds of a local government or similar political subdivision. Below, we analyze each set of laws in turn.

A. New York State Funds

Under New York State Finance Law (“NYSFL”), State funds that may be invested or held in deposit accounts do not specify how such funds may be held,⁴

⁴ See NYSFL § 88-b (Suburban transportation fund); § 90 (New York state department of transportation highway safety program fund); § 90-a (New York state passenger facility charge fund); § 92-d (Municipal assistance tax fund); § 92-h (Sales tax revenue bond tax fund); § 92-e (Municipal assistance state aid fund); § 92-f (Special sales and compensating use tax fund for the city of Yonkers); § 92-i (Stock transfer incentive fund); § 92-r (Local government assistance tax fund); § 92-z (Revenue bond tax fund); § 97-f (Mental health services fund); § 97-p (Community college tuition and instructional income fund); § 97-t (Lawyers’ fund for client protection of the

or generally specify that such funds must be deposited in banks, trust companies or industrial banks.⁵

For purposes of the NYSFL, none of the terms defining the nature of the depository, *e.g.*, bank, trust company, industrial bank, savings bank, etc. are defined. A plain reading of these statutes,⁶ however, leads to the conclusion that these terms do not exclude Non-NY State Banks. For example, as mentioned above, certain provisions of the NYSFL governing specialty funds not relevant to this analysis limit the types of acceptable depository banks to those chartered in New York. Reading the terms “bank, trust company or industrial bank” collectively to refer only to NY State Banks would render the references to “state banks, trust companies or savings banks” for these specialty funds redundant.⁷ Consequently, we believe that there is a reasonable basis to conclude that New York satisfies the Equivalence Requirement with respect to NY Public Funds at the State level.

B. New York Municipal and Other Public Funds

Pursuant to Section 10 of the New York General Municipal Law (the “NYGML”), the governing board of every local government is required to designate certain “banks” to take NY Public Deposits. For these purposes, the term “bank” is defined in NYGML § 10(d) to mean “a bank as defined by the banking law or a national banking association located and authorized to do business in New York.” New York Banking Law (“NYBL”) in turn defines the term “bank” to mean, “unless a different meaning appears from the context, any

state of New York); § 97-mm (State park infrastructure fund); § 97-bbb (Clean water/clean air fund).

⁵ See NYSFL § 97-cccc (Interest assessment surcharge fund); § 105 (concerning money received by the commissioner of taxation and finance on account of the state generally). In certain limited cases not relevant to this letter, either because New Hampshire does not have an equivalent statutory fund or because M&T does not plan to hold such funds, the relevant statute limits the types of banks to those chartered in New York by express reference to “state banks, trust companies or savings banks.” See NYSFL § 95 (specifying that all moneys in the abandoned property fund, is to be deposited by the state comptroller in one or more state banks, trust companies or savings banks); § 99-a (specifying that the justice court fund must be deposited to the credit of the comptroller in one or more state banks, trust companies or savings banks). Neither of these statutory limitations would be inconsistent with the Equivalence Requirement.

⁶ *E.g.*, *Sebelius v. Cloer*, 569 U.S. 369 (2013). See also *Merit Management Group, LP v. FTI Consulting, Inc.*, 583 U.S. ___, No. 16-784 (Feb. 27, 2018) (finding that the “plain meaning” of 11 U.S.C. § 546(e) was dispositive of the matter at issue).

⁷ The canon against superfluity provides that where one reading of a statute would make one or more parts of the statute redundant and another reading would avoid the redundancy, the reading that avoids redundancy is preferred. See, *e.g.*, *Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. 91, 106 (2011).

corporation, other than a trust company, organized under or subject to the provisions of article three [of the NYBL].”⁸

Although a Non-NY State Bank is not, by definition, “organized under” Article three of the NYBL, such banks are “subject to” the provisions of Article three to the extent that they have a branch in New York. In particular, NYBL § 226 provides that an out-of-state state bank that opens, occupies or maintains a branch in New York shall have in the State of New York the same powers under the laws of New York as a like-type banking organization, which powers are set out in Article three of the NYBL. This means that a Non-NY State Bank’s powers at its New York branches are (subject to any further limitations under the laws of its chartering state) the same as the powers of NY State Bank’s powers, and thus are subject to the powers provisions of Article three of the NYBL.⁹

Including Non-NY State Banks with New York branches within the term “bank” for purposes of NYGML § 10(d) also would be fully consistent with NYBL § 107-a, which imposes security and other requirements on any “public depository” that accepts NY Public Deposits from a political subdivision. The term “public depository,” is defined for purposes of that section to mean a “bank, trust company or other depository, whether state or federally chartered...” indicating that a “bank” or “other depository” eligible to accept NY Public Deposits at the municipal level can be chartered under the laws of another state (otherwise there would be no need to include the term “other depository” or the proviso “whether state or federally chartered”).

This reading also is fully consistent with how New York municipalities have interpreted NYGML § 10(d) in practice. For example, § 1-02 of Title 22 of the Rules of the City of New York define the term “bank” to mean “(1) **a bank or trust company, as defined in New York State General Municipal Law § 10;** or (2) a branch of a savings bank, savings and loan association, federal savings and loan association, or federal savings bank located in a banking development district, as approved by the State of New York Banking Department, provided such branch (i) was opened after such approval or (ii) is a branch of the applicant to the Department for designation of the district and was opened on or after January 1, 1997 (emphasis added).” New York City has interpreted the term “bank” for purposes of NYGML § 10 to include Non-NY State Banks (none of which are savings banks, savings and loan associations, federal savings and loan associations or federal savings banks) eligible for designation under clause (2) of

⁸ NYBL also uses the terms “banking organization,” “banking corporation,” “banking institution,” and “depository,” often inconsistently.

⁹ See Letter from Thomas Eckmier, Senior Attorney, dated August 22, 2011, *available at* <https://www.dfs.ny.gov/legal/interpret/lo110822.htm>.

the New York City definition. In particular, as of May 26, 2021, the list of such designated banks includes the following Non-NY State Banks: State Street Bank (Massachusetts), Bank OZK (Arkansas), ConnectOne Bank (New Jersey) and International Finance Bank (Florida).¹⁰ Consequently, we also believe that there is a reasonable basis to conclude that New York satisfies the Equivalence Requirement with respect to NY Public Funds at the local government level.

III. Conclusion

In order for a Non-NH State Bank to take Public Deposits in New Hampshire, the NH Public Deposit Statutes require that the laws of the home state of the Non-NH State Bank do not discriminate against out of state banks, including NH State Banks. As detailed in Section II above, under New York law, there is a reasonable basis to conclude that Non-NY State Banks may accept NY Public Deposits in substantially the same manner and subject to substantially the same terms and conditions as is permitted for NY State Banks. Consequently, we believe that there is a reasonable basis to conclude that New York satisfies the Equivalence Requirement with respect to NY Public Funds.

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Thank you for your consideration. Please reach out at any time to Gregory Lyons at (212) 909-6566 with questions or concerns.

Sincerely,

Gregory Lyons

¹⁰ See New York City Banking Commission, “New York City Designated Banks,” as of May 26, 2021, *available here*.