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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00–045

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 221.0322, Stats., provides that a bank, directly or through a subsidiary of the bank, may undertake any activity, exercise any power or offer any financially related product or service in Wisconsin that any other provider of financial products or services may undertake, exercise or provide or that the Division of Banking finds to be financially related. These activities, powers, products and services are limited to those ***specified by rule*** of the Division of Banking. The intent of the statutory provision is to afford an opportunity to the Legislature, through the process of legislative review of proposed administrative rules, to evaluate specific grants of authority to state-chartered banks. Section DFI-Bkg 4.04 (1) provides in part that a financial institution may control a financial subsidiary, or hold an interest in a financial subsidiary, to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The term "financial activity" is defined in s. DFI-Bkg 4.01 (3) to mean any activity defined to be financial in nature or incidental to a financial activity for bank holding companies under federal law and any activity determined by the federal Secretary of the Treasury to be financial in nature or incidental to a financial activity for financial subsidiaries of national banks. The rule appears to be an attempt to authorize state-chartered banks to assume federal powers on a wholesale basis without any attempt to enumerate specific powers. If this is the intent of the rule provision, the department should explain its statutory authority for the rule in view of: (a) the intent of s. 221.0322, Stats., to require a specification of expanded powers through the rule-making process; and (b) the provisions of 1999 Assembly Bill 563 which were

drafted to eliminate the specific rule-making requirement in this area. [The comments in this report also apply to the creation of chs. DFI-SB 19 and DFI-SL 21.]

2. Form, Style and Placement in Administrative Code

a. The creation of ch. DFI-Bkg 4 should all be contained in one section of the rule with a treatment clause that reads substantially as follows: "Chapter DFI-Bkg 4 is created to read:".

b. The definitions in s. DFI-Bkg 4.01 (1) should be relocated into their own separately numbered subsections and placed in alphabetical order in relation to the other definitions in subs. (2) to (7). In other words, the definition of "subsidiary" should follow the definition of "insured depository institution."

c. In s. DFI-Bkg 4.08, the word "must" should be replaced by the word "shall."

d. Section DFI-Bkg 4.09 refers to an action being completed "before the effective date of this chapter." First, the rule has no effective date provision. When is it to be effective? Second, by inserting the phrase "(revisor inserts date)" after the above-quoted phrase, the revisor will insert the actual date of effectiveness in the rule and readers will be able to know the applicable date.

e. With respect to the note to the rule, it should be included in one of the numbered sections of the rule. Ideally, it would be located immediately following the provision of the rule that refers to a form. [See the text of the Manual for examples of notes.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section DFI-Bkg 4.03 refers to a fee "prescribed by the division." Where is this fee prescribed?

b. Section DFI-Bkg 4.04 (2) refers to "prior approval of the division." Is this the approval under s. DFI-Bkg 4.03? The rule should be clarified.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. DFI-Bkg 4.01 (5), the first occurrence of the word "institution" should be replaced by the word "institutions."

b. Section DFI-Bkg 4.03 refers to parties mutually agreeing to "extend the application period." Is it the application period that is extended or the period in which the division makes a decision on the application? The rule may need to be clarified.

c. Section DFI-Bkg 4.04 (2) should be rewritten to read: "Prior to acquiring control of, or an interest in a financial subsidiary, a financial institution is required to receive the prior approval of the division."

d. The parenthetical material in s. DFI-Bkg 4.04 (3) should be deleted, or if it is important for the substance of the rule, the parenthetical notations should be deleted.

e. Section DFI-Bkg 4.07 (3) seems to be redundant.

f. In s. DFI-Bkg 4.09, the phrase "the provisions of" should be inserted after the word "Notwithstanding."

g. Section DFI-Bkg 4.11 requires that the division receive prior notice of disposition of a financial subsidiary. How "prior" must the notice be? Does the division have any authority to affect the transaction?