Chapter DFI–Bkg 3

PARITY WITH NATIONAL BANKS

Note: Chapter Bkg 3 was renumbered Chapter DFI–Bkg 3 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498, eff. 7–1–97.

DFI–Bkg 3.001 Definition. In this chapter:

(1) "Depository institutions" means state or national banks, state or federal savings banks, state or federal savings and loan associations, or state or federal credit unions.

History: Cr. Register, February, 1994, No. 458, eff. 3–1–94.

DFI–Bkg 3.01 Bank–owned banks, lending and depository authority. (1) A bank–owned bank organized under s. 221.1202, Stats., may provide banking and bank related services to or for all of the following:

(a) Subsidiaries or organizations owned by depository institutions;

(b) Directors, officers or employees of depository institutions, including any subsidiary or organization owned by a depository institution;

(c) Depository institution trade associations; and

(d) Depository institutions or their holding companies.

(2) A bank–owned bank organized under s. 221.1202, Stats., may provide correspondent banking services at the request of other depository institutions or their holding companies.

History: Cr. Register, September, 1982, No. 321, eff. 10–1–82**;** am. (intro.), (2) and (3), cr. (4), Register, February, 1994, No. 458, eff. 3–1–94; renum. 3.01 to be (1) and am. (1) (intro.) and (d), cr. (2), Register, March, 1996, No. 483, eff. 4–1–96; **corrections in (1) (intro.) and (2) made under s. 13.93 (2m) (b) 7., Stats**.

DFI–Bkg 3.02 Bank–owned banks, limitations on lending and depository authority. The total loans made and deposits received of a bank–owned bank pursuant to s. DFI–Bkg 3.01 may not exceed the following:

(1) The total loans made to all entities and individuals described in s. DFI–Bkg 3.01 may not exceed 10% of the total assets of the bank.

(2) The total deposits received from all individuals and entities described in s. DFI–Bkg 3.01 may not exceed 10% of the total liabilities of the bank.

History: Cr. Register, September, 1982, No. 321, eff. 10–1–82.

DFI–Bkg 3.03 Use of data processing equipment and furnishing of data processing service. As part of its banking business and incidental thereto, a bank may collect, transcribe, process, analyze, and store, for itself and others, banking, financial, or related economic data. In addition, incidental to its banking business, a bank may:

(1) Market a by–product (such as program or output) of a data processing activity described in this rule; and

(2) Market excess time on its data processing equipment so long as the only involvement by the bank is furnishing the facility and necessary operating personnel.

History: Cr. Register, September, 1982, No. 321, eff. 10–1–82.

DFI–Bkg 3.04 Operations through subsidiaries. (1) GENERAL. With the prior approval of the administrator of the division of banking, a bank may engage in activities which are a part of the business of banking or incidental to the business of banking by means of an operating subsidiary corporation. In order to qualify as an operating subsidiary hereunder, at least 80% of the voting stock of the subsidiary must be owned by the parent bank. No bank may commence any such activity unless the type, place and manner in which the activity is conducted has been approved by the administrator of the division of banking in writing or the administrator of the division of banking does not take written objection to the bank's completed application within 30 business days after it has been filed under this section.

(2) ACTIVITIES PERMITTED. An operating subsidiary may perform any business function which is a part of the business of banking or incidental to the business of banking. For example, an operating subsidiary may, among other things, issue credit cards, service mortgages, lease property or operate a credit bureau.

(3) TRANSACTIONS WITH PARENT BANK. Transactions between the parent bank and the operating subsidiaries are subject to the limitations contained in s. 221.0320, Stats., unless the subsidiary engages solely in furnishing services to or in performing services for a parent bank.

(4) APPLICABILITY OF BANKING LAWS. All provisions of the banking laws and rules applicable to the operations of the parent bank shall be equally applicable to the operations of its operating subsidiaries.

(5) CONSOLIDATION OF FIGURES. Unless otherwise provided by banking laws or regulations, pertinent book figures of the parent bank and its operating subsidiaries, except agricultural credit corporations, shall be consolidated for the purpose of applying applicable statutory limitations, including but not limited to s. 221.0319, 221.0320, 221.0324 or 221.0328, Stats.

(6) EXAMINATION AND SUPERVISION. Each operating subsidiary shall be subject to examination and supervision by the administrator of the division of banking in the same manner and to the same extent as the parent bank. If, upon examination, the administrator of the division of banking ascertains that the subsidiary is created or operated in violation of the banking law or regulation or that the manner of operation is detrimental to the business of the parent bank and its depositors, the administrator of the division of banking may order the bank to dispose of all or part of the subsidiary upon such terms as the administrator of the division of banking may deem proper.

(7) REPORT OF DISPOSITION OF OPERATING SUBSIDIARY. Prior to disposition of an operating subsidiary, the parent bank shall inform the administrator of the division of banking by letter of the terms of the transaction.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; am. (1), Register, December, 1987, No. 384, eff. 1–1–88; **corrections in (3) and (5) made under s. 13.93 (2m) (b) 7., Stats.**

DFI–Bkg 3.05 Leasing of personal property. (1) GENERAL AUTHORITY. (a) A bank may engage in lease financing transactions by complying with this subsection and either sub. (2) relating to leases on a net lease basis or sub. (3) relating to leases on a net, full–payout lease basis.

(b) A bank may enter into a lease financing transaction only if it can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

1. Rentals;

2. Estimated tax benefits; and

3. The estimated residual value of the property, at the expiration of the term of the lease.

(c) "Net lease" means a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

1. The servicing, repair or maintenance of the leased property during the lease term;

2. The purchasing of parts and accessories for the leased property. However, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with any applicable requirements for maximum estimated residual value;

3. The loan of replacement or substitute property while the leased property is being serviced;

4. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance; or

5. The renewal of any license or registration for the property unless such action by the bank is necessary to protect its interest as owner or financier of the property.

(d) If, in good faith, a bank determines that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the bank may:

1. As the owner and lessor under a net lease or a net, full–payout lease, take reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease; or

2. As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease.

(e) The limitations contained in par. (c) do not prohibit a bank from:

1. Including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in par. (d); or

2. Arranging for any of the services listed in par. (c) to be provided by a third party to a lessee, at the expense of the lessee, with respect to property leased by the lessee.

(f) A bank may acquire specific property to be leased only after the bank has entered into either:

1. A legally binding written agreement which indemnifies the bank against loss in connection with its acquisition of the property; or

2. A legally binding written commitment to lease the property on terms which comply with the provisions of this subsection and either sub. (2) or (3).

(g) At the expiration of the lease, including any renewal or extensions with the same lessee, or in the event of a default on a lease agreement prior to the expiration of the lease term, all of the bank's interest in the property shall either be liquidated or re–leased in conformance with this subsection and either sub. (2) or (3), as soon as practicable, but in no event later than 2 years from the expiration of the lease. Property which the bank retains in anticipation of re–lease must be revalued at the lower of current fair market value or book value prior to any subsequent lease.

(h) On the return of leased property at the expiration of a conforming lease term, or on the default of a lessee, a short–term bridge or interim lease is permissible if it otherwise conforms with the net lease requirements of par. (c). Such leases need not comply with sub. (2) or (3) and may be used pending the sale of off–lease property, or its re–lease as a conforming long–term financing transaction.

(i) Where a bank enters into leases pursuant to both subs. (2) and (3), the bank must segregate the records it maintains with respect to each type of lease.

(j) Nothing in this section shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 USC 1667 et. seq., or the Wisconsin Consumer Act, chs. 421 to 427, Stats.

(k) Leases permissible under this section are subject to the limitations on obligations under s. 221.0320, Stats.

(2) AUTHORITY TO LEASE PERSONAL PROPERTY ON A NET LEASE BASIS. (a) Subject to the limitations of this subsection and sub. (1), and provided that the aggregate book value of all tangible personal property held for lease under this subsection does not exceed 10% of the consolidated assets of the bank, a bank may:

1. Invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment or furniture for lease financing transactions on a net lease basis; or

2. Become the owner and lessor of such tangible personal property by purchasing the property from another lessor in connection with its purchase of the related lease.

(b) Lease financing transactions entered into under this subsection shall have an initial lease term of not less than 90 days. However, such period shall not be applicable to the acquisition of property subject to an existing lease with a remaining maturity of less than 90 days, provided that at its inception such lease complied with the provisions of this subsection and sub. (1).

(3) AUTHORITY TO LEASE PERSONAL PROPERTY ON A NET, FULL–PAYOUT LEASE BASIS. (a) Subject to the limitations of this subsection and sub. (1), and provided the lease is a net, full–payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease, a bank may:

1. Become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property; or

2. Become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and

3. Incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(b) Any unguaranteed portion of the estimated residual value relied upon by the bank to yield a full return on a net, full–payout lease shall not exceed 25% of the original cost of the property to the lessor. The amount of any estimated value guaranteed by a manufacturer, lessee or a third party which is not an affiliate of the bank may exceed 25% of the original cost of the property where the bank has determined, and can provide, full supporting documentation that the guarantor has the resources to meet the guarantee.

(c) Calculations of estimated residual value of net, full–payout leases of personal property to federal, state or local government entities may be based on reasonably anticipated future transactions or renewals.

(d) In all net, full–payout leases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full–payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

Note: In operating under this rule it is anticipated that banks will estimate the total cost of financing the property over the term of the lease to reflect, among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of each lessor and lessee involved in the transaction and prevailing rates in the money and capital markets. Where the calculation of the cost of financing according to this formula is not reasonably determinable, a lease may be considered to have met the test for recovering the cost financing if the bank's yield from the lease is equiva-

lent to what the yield would be on a similar loan. In all cases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full–payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

History: Cr. Register, July, 1983, No. 331, eff. 8–1–83; r. and recr. (1), (2) and (3), r. (4) and (5), Register, March, 1996, No. 483, eff. 4–1–96; **correction in (1) (k) made under s. 13.93 (2m) (b) 7., Stats**.

DFI–Bkg 3.06 Purchase of shares of investment companies. (1) AUTHORITY. A bank may purchase for its own account shares of investment companies registered with the securities and exchange commission or a privately offered fund sponsored by an affiliated commercial bank if the investment company shares meet the following requirements:

(a) The bank has an equitable and equal proportionate undivided interest in the underlying assets of the investment company,

(b) The bank is shielded from personal liability for acts or obligations of the investment company, and

(c) The portfolio of each fund consists solely of investment securities which are eligible for purchase by banks pursuant to ch. 219, Stats., ss. 221.0301 (5), 221.0320 (3) and (8) (b), Stats., and s. DFI–Bkg 4.01.

(2) GOVERNMENT SECURITIES. Banks may purchase and hold investment company shares without limitation if the portfolio of the fund consists entirely of investments in government securities in which a bank could invest directly without limitation.

(3) MUNICIPAL SECURITIES. Shares of investment companies whose portfolios contain investments which are subject to limitation under s. 221.0320 (3), Stats., may be held in an amount not to exceed 25% of the capital and surplus of the bank. In addition, a bank's pro rata share of any security held in the portfolio of one or more investment companies whose shares are held by the bank may not, in aggregate or in combination with the bank's direct holdings of the security, exceed the limitations of s. 221.0320 (3), Stats.

(4) OTHER SECURITIES. Shares of investment companies whose portfolios contain investments other than government securities or municipal securities, may be held in an amount not to exceed 20% of the capital stock and surplus of the bank. In addition, a bank's pro rata share of any security held in the portfolio of one or more investment company whose shares are held by the bank may not, in aggregate or in combination with the bank's direct holdings of the security, exceed the investment limitations for the security as provided for in s. 221.0320, Stats., ss. DFI–Bkg 4.01, 6.01, 6.03 and other relevant statutes and regulations.

Note: Sections Bkg 4.01, 6.01 and 6.03 were repealed effective 9–1–99. The Current section DFI–Bkg 4.01 is not the same section referred to in this section.

(5) FUTURES, FORWARDS, OPTIONS, REPURCHASE AGREEMENTS AND SECURITIES LENDING. Certain investment companies use futures, forward placement and options contracts as well as repurchase agreements and securities lending arrangements as part of their portfolio management strategy. A bank may purchase and hold the shares of such investment companies if these instruments are used in a manner that would be considered acceptable for use in a bank's own investment portfolio.

(6) REVIEW OF INVESTMENT PORTFOLIOS. The bank shall review the investment portfolio of each investment company in which it holds shares on a quarterly basis to make certain that the composition of each portfolio meets the requirements of this section.

(7) ACCOUNTING. The bank shall follow the instructions approved by the administrator of the division of banking for use by the banks for the preparation of reports of condition and income to account for investments made in shares of investment companies.

(8) APPROVAL OF BOARD OF DIRECTORS. The bank's investment policy, as formally approved by its board of directors, shall specifically provide for investments made under this section. Prior approval of the board must be obtained for initial investments in specific investment companies and recorded in the board's minutes. Procedures, standards and controls for implementation of such investments must be established.

History: Cr. Register, March, 1985, No. 351, eff. 4–1–85; r. and recr. Register, January, 1988, No. 385, eff. 2–1–88; **corrections in (3) and (4) made under s. 13.93 (2m) (b) 7., Stats.**

DFI–Bkg 3.07 Procedure for chartering a savings and loan as a bank. (1) A savings and loan association may be converted into a state chartered bank in compliance with 12 USC 1815 (d) (2) (G), with the approval of the administrator of the division of banking.

(2) A savings and loan association seeking to convert into a state chartered bank shall pay the administrator of the division of banking a fee of $2,000 plus the actual costs incurred by the administrator of the division of banking in investigating the proposed reorganization.

(3) The stockholders or members of the savings and loan association shall make, execute and acknowledge articles of organization as required by ch. 221, Stats., and set forth the written consent of the stockholders or members.

(4) Upon the filing of the articles as provided by ch. 221, Stats., and upon the approval of the administrator of the division of banking, the savings and loan association shall be deemed to be converted and thereupon all assets, real and personal, of the converted savings and loan association shall be vested in and become the property of the new bank, subject to all the liabilities of the savings and loan association not converted.

History: Cr. Register, July, 1990, No. 415, eff. 8–1–90.