

DFI/SB-INVESTMENT IN LLC

1.03

98-137

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-137

AN ORDER to amend DFI-SB 1.03 (11) and 15.01 (1) (b) and (d) and DFI-SL 1.03 (14) and 15.01 (1) (b) and (d); and to create DFI-SB 1.03 (7m) and 15.01 (3) (c) and DFI-SL 1.03 (8m) and 15.01 (3) (c), relating to codifying a policy authorizing savings banks and savings and loan associations to invest in limited liability companies.

Submitted by **DEPARTMENT OF FINANCIAL INSTITUTIONS**

09-11-98 RECEIVED BY LEGISLATIVE COUNCIL.

10-08-98 REPORT SENT TO AGENCY.

RS:DLS:jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 98-137

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.]

2. Form, Style and Placement in Administrative Code

a. The amendment to s. DFI-SB 15.01 (1) (b) and s. DFI-SL 15.01 (1) (b) should read as follows:

Partnership or joint venture or LLC capital contributions.

b. The rule does not contain an effective date provision. [See s. 1.02 (4), Manual.]

**PROPOSED ORDER OF THE
DIVISION OF SAVINGS INSTITUTIONS IN THE
DEPARTMENT OF FINANCIAL INSTITUTIONS
AMENDING AND CREATING RULES**

The Division of Savings Institutions in the Department of Financial Institutions adopts an order to amend ss. DFI-SB 1.03(11), DFI-SB 15.01(1)(b) and (d), DFI-SL 1.03(14) and DFI-SL 15.01(1)(b) and (d); and to create ss. DFI-SB 1.03(7m), DFI-SB 15.01(3)(c), DFI-SL 1.03(8m) and DFI-SL 15.01(3)(c), relating to codifying a policy authorizing savings banks and savings and loan associations to invest in limited liability companies.

NOTICE IS HEREBY GIVEN that pursuant to ss. 214.715(1)(d) and 215.02(7)(a), Stats., and according to the procedure set forth in s.227.16(2)(e), Stats., the Division of Savings Institutions in the Department of Financial Institutions will adopt the following rule as proposed in this notice without public hearing unless, within 30 days after publication of this notice (revisor to insert date), the Division of Savings Institutions in the Department of Financial Institutions is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

**Analysis Prepared by the Division of Savings Institution
in the Department of Financial Institutions**

Statutory authority: ss. 214.715(1)(d) and 215.02(7)(a), Stats.

Statutes interpreted: ss. 214.04(8), 214.485(10) and 215.13(26)(f), Stats.

Under current statutes, savings banks and savings and loan associations (“S&Ls”) may invest in the stock of subsidiary service corporations that are formed for specific purposes. Long-standing administrative rules have permitted savings institutions to also invest in subsidiary partnerships and joint ventures.

Chapters 214 and 215, Stats. authorize investments in subsidiary “corporations”. However, since 1989 for S&Ls and 1994 for savings banks, administrative rules have allowed investments in subsidiary partnerships and joint ventures. Long-standing administrative rules have considered these two types of legal entities as the functional equivalent of corporations. The more recently created business entity known as the limited liability company (“LLC”) has been allowed under a similar, informal interpretation. This rule now codifies that interpretation by expanding the types of subsidiary business entities that savings institutions may form and invest in to include the LLC.

Fiscal estimate. This rule will have no fiscal impact on the Division of Savings Institutions in the Department of Financial Institutions. The review of a savings bank’s and S&Ls’ use of this provision will be noted as part of routine examinations of savings banks and S&Ls with existing personnel and resources.

Small business flexibility statement. This rule will provide that all savings banks and S&Ls, including savings banks and S&Ls included in the definition of “small business” under s. 227.114(1)(a), Stats. may invest in subsidiary LLCs. Exempting small businesses from this rule would be contrary to this objective and not in the best interests of the savings institutions and the public.

Contact person: Thomas M. Boykoff, Administrator, Division of Savings Institutions in the Department of Financial Institutions; telephone: 261-4338.

Pursuant to the authority of the Division of Savings Institutions in the Department of Financial Institutions under ss. 214.715(1)(d) and 215.02(7)(a), Stats., the division amends ss. DFI-SB 1.03(11), DFI-SB 15.01(1)(b) and (d), DFI-SL 1.03(14) and DFI-SL 15.01(1)(b) and (d); and creates ss. DFI-SB 1.03(7m), DFI-SB 15.01(3)(c), DFI-SL 1.03(8m), DFI-SL 15.01(3)(c) and DFI-SL 13.03(3)(d)6, relating to codifying a policy authorizing savings banks and savings and loan associations to invest in subsidiary limited liability companies.

Thomas M. Boykoff, Administrator

Attachments (2)

Date: September 4, 1998

LLC RULE DRAFT

SECTION 1. DFI-SB 1.03(7m) is created to read:

DFI-SB 1.03(7m) "LLC" means a limited liability company organized under ch. 183, Stats.

SECTION 2. DFI-SB 1.03(11) is amended to read:

DFI-SB 1.03(11) "Subsidiary" means any business in which a savings bank directly or indirectly owns an interest, and includes a service corporation, partnership, joint venture, LLC and a company or business in which a savings bank indirectly owns an interest through another subsidiary or a series of subsidiaries.

SECTION 3. DFI-SB 15.01(1)(b) and (d) are amended to read:

DFI-SB 15.01(1)(b) Partnership, joint venture or LLC capital contributions.

(d) Liability for the debt of a partnership ~~or~~ joint venture or LLC.

SECTION 4. DFI-SB 15.01(3)(c) is created to read:

DFI-SB 15.01(3)(c) *LLC*. An application for approval of an investment in an LLC shall contain:

1. A copy of the LLC's articles of organization and any amendments.
2. A copy of the LLC's operating agreement and any amendments.
3. A list of members of the LLC.

4. A list of officers, directors or other persons with managerial authority of the LLC.

SECTION 5. DFI-SL 1.03(8m) is created to read:

DFI-SL 1.03(8m) "LLC" means a limited liability company organized under ch. 183, Stats.

SECTION 6. DFI-SL 1.03(14) is amended to read:

DFI-SL 1.03(11) "Subsidiary" means any business in which an association directly or indirectly owns an interest, and includes a service corporation, partnership, joint venture, LLC and a business in which an association indirectly owns an interest through another subsidiary or a series of subsidiaries.

SECTION 7. DFI-SL 15.01(1)(b) and (d) are amended to read:

DFI-SL 15.01(1)(b) Partnership, joint venture or LLC capital contributions.

(d) Liability for the debt of a partnership ~~or~~, joint venture or LLC.

SECTION 8. DFI-SL 15.01(3)(c) is created to read:

DFI-SL 15.01(3)(c) *LLC*. An application for approval of an investment in an LLC shall contain:

1. A copy of the LLC's articles of organization and any amendments.
2. A copy of the LLC's operating agreement and any amendments.

3. A list of members of the LLC.
4. A list of officers, directors or other persons with managerial authority of the LLC.

TMB 8/24/98