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CLEARINGHOUSE RULE 95-119

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 October 1994.]

1. Statutory Authority

Section 220.04 (8), Stats., generally provides that the Commissioner of Banking by rule may authorize state banks to make any loan or investment or exercise any right, power or privilege permitted national banks under federal law, regulation or interpretation. The Rules Clearinghouse consistently has interpreted this provision to require the commissioner to incorporate all federal authority and limitations in a parity rule. Consequently, although the commissioner predominantly has followed 12 U.S.C. s. 24 (7) and (10) and 12 C.F.R. Part 23, the commissioner should explain the following deviations from federal law in the rule report to the Legislature required under s. 227.19 (2) and (3), Stats.:

- (1) The rule does not contain provisions similar to those found in 12 C.F.R. s. 23.3 (a) and (b).
- (2) The rule does not contain a provision similar to that found in 12 C.F.R. s. 23.5.
- (3) Section Bkg 3.05 (3) (a) 1. contains the phrase “at the request of the lessee, who wishes to lease it from the bank.” This phrase is in addition to the language found in 12 C.F.R. s. 23.10.

2. Form, Style and Placement in Administrative Code

a. In s. Bkg 3.05 (1) (b), “On entering into a lease financing transaction, a bank must” should be replaced by “A bank may enter into a lease financing transaction only if it can.”

b. In s. Bkg 3.05 (1) (h) and (i), the two references to “rule” should be replaced by “section.”

c. In s. Bkg 3.05 (2), the word “must” should be replaced by the word “shall.”

d. In SECTION 4 of the rule, second and third lines: “Bkg 3.05 (4) is repealed.” and “Bkg 3.05 (5) is repealed” should be deleted. The first line, “Bkg 3.05 (4) and (5) are repealed” is sufficient to accomplish the repeal.

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

a. The transmittal letter states that relevant federal statutes or regulations include “12 CFR 23” in addition to 12 U.S.C. s. 24 (7) and (10). In the analysis of the rule, mention is made of the powers granted national banks by 12 U.S.C. s. 24 (7) and (10), but no reference is made to the relationship of 12 C.F.R. s. 23 to national banks and the powers being given to state banks under the rule.

b. In SECTIONS 1 and 2 of the rule [s. Bkg 3.05 (1) and (3)], references are made to a “net full-payout lease.” In the prior rule, s. Bkg 3.05 (1) (a) contained a definition of a “full payout lease.” The rule would be clearer if such a definition were created in s. Bkg 3.05 (3).