

PROPOSED REVISIONS TO § 53-5-2.

When the Study Commission reviewed Article 5A, extra time was requested by OCOB to permit the agency to solicit input from the industry about this important section. A number of considerations were raised, but in the end, only a few minor changes were suggested. They are reflected below.

"§ 53-5-2. Investment authority.

- (a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in:
- (1) The shares or other securities of the following:
 - a. Any other depository institution.
 - b. Any industrial bank, bankers' bank or other deposit taking entity chartered or existing under any federal or State law, including the shares or other securities of clearing corporations defined in 23 G.S. 25-8-102, the shares or other securities of central reserve banks and the shares of an Edge Act bank. The investment of any bank in the shares of a central reserve bank or bank organized under the Edge Act, 12 U.S.C. 611 et seq., shall at no time exceed ten percent of the required capital of the bank making the investment.
 - c. Any company in which a federally chartered institution is authorized to invest under any statute, or any regulation, official circular, bulletin, order or written interpretation issued by the OCC.
 - (2) Bonds or notes issued by or fully and unconditionally guaranteed as to principal and interest by the United States Treasury. No bank shall be required to maintain a reserve against deposits secured by United States Treasury bonds or notes equal in market value to the amount of such deposits, and such bonds or notes shall be valid security for all loans and deposits to the same extent as are any obligations of the United States.
 - (3) Federal farm loan bonds, notes, or similar obligations issued by a farm credit system institution.
 - (4) Securities issued by federal home loan banks pursuant to the Federal Home Loan Bank Act of 1932, as amended.
 - (5) Bonds or notes secured by a mortgage or deed of trust insured or guaranteed by the Federal Housing Administration, Secretary of Housing and Urban Development or the Veterans Administration, or in mortgages or deeds of trust on real estate which have been accepted for insurance or guarantee by the Federal Housing Administration, Secretary of Housing and Urban Development or Veterans Administration, and in obligations of a national mortgage association which obligations are insured or guaranteed by the United States government. No law of this State prescribing the nature, amount or form of security or requiring security upon which loans or 50 investments may be made, or prescribing the rates or time of payment of the interest any

obligation may bear, or prescribing the period for which loans or investments may be made, shall apply to investments made pursuant to this subsection.

(6) Mutual funds, but subject to rules or orders adopted by the Commissioner.

(b) A bank may make an investment in a subsidiary which will be operated as a:

(1) Bank operating subsidiary.

(2) Financial subsidiary.

(3) DPC subsidiary, as defined by G.S. 53-1-4(29).

(c) An investment by a bank or a bank subsidiary pursuant to subsection (b) or (d) of this section shall receive the same accounting and regulatory treatment as is accorded to such investment by the bank's primary federal supervisor. No investment shall be made by a bank or a bank subsidiary pursuant to subsection (b) or (d) of this section unless:

(1) The investment is approved by the board of directors of the bank.

(2) The bank has carefully investigated the business or activity in which the subsidiary established by the investment will engage.

(3) The bank has established the risk management and financial controls necessary to engage in the business or activity in a safe and sound manner.

(4) The bank has, and following the making of the investment and the application of the provisions of this subsection, will continue to satisfy the capital requirements of this Chapter.

(d) A bank operating subsidiary may make an investment of any size in a lower tier subsidiary.

(e) Except as provided in subsection (f) of this section, a bank or bank operating subsidiary proposing to make an investment described in subsection (b), (c), or (d) of this section shall give prior written notice to the Commissioner, providing such detail as the Commissioner may require. Unless the Commissioner, within 30 days following receipt of the notice, notifies the bank or bank operating subsidiary that the Commissioner objects to the proposed investment, the bank or bank operating subsidiary may complete the investment. However, the Commissioner may extend the period within which to object to the proposed investment if the Commissioner determines that it raises issues which require additional information or additional time for analysis. While the objection period is so extended, the bank or bank operating subsidiary may not proceed with respect to the proposed investment.

(f) The prior notice requirement provided by subsection (e) of this section shall not apply if all of the following apply:

(1) The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent examination.

(2) Each activity of the subsidiary in which the investment is to be made is either:

a. One in which the bank is then engaged or has previously been engaged, directly or through a different subsidiary, and for which all necessary approvals of bank supervisory agencies and of the 41 Commissioner have previously been obtained and remain in effect; or

b. One for which no prior notice or application for approval to any federal bank supervisory authority is required.

- (3) A bank that makes an investment pursuant to the exception created by this subsection shall nevertheless notify the Commissioner in writing of the investment within 30 days thereafter.

(g) Any bank, out-of-state bank, ~~or~~ national bank, or any subsidiary thereof, which engages in an activity subject to licensure and/or regulation under the laws of this State, other than this Chapter, shall be subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by the appropriate regulatory agency which licenses and/or regulates nonbanks which engage in the same activity.

(h) The Commissioner shall monitor the impact of investment activities of banks and their subsidiaries under this section on the safety and soundness of such banks. Any securities owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the securities, and if not so disposed of, they shall be charged to profit and loss account, and no longer carried on the books as an asset. The limit of time in which securities shall be disposed of or charged off the books of the bank may be extended by the Commissioner if in the Commissioner's judgment it is for the best interest of the bank that the extension be granted, provided that the limitations imposed in this section on the ownership of shares or other equity ownership interest in companies are suspended only to the extent that any bank operating under the supervision of the Commissioner may subscribe for and purchase shares and other equity ownership interests in, or debentures, bonds, or other types of securities of, any ~~corporation~~ company organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors.

(i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:

- (1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith.
- (2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made.

(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government, or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent of its required capital."