RRC STAFF OPINION

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: OFFICE OF THE COMMISSIONER OF BANKS

RULE CITATION: 04 NCAC 03C .0201

RECOMMENDED ACTION:

 Return the rule to the agency for failure to comply with the Administrative Procedure Act

 Approve, but note staff’s comment

X Object, based on:

 X Lack of statutory authority

 Unclear or ambiguous

 Unnecessary

 Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*There is not sufficient authority cited for the provision in (10) allowing the Commissioner of Banks (COB) to “set all requirements pertaining to notice and publication, time limitations, and any comment period pursuant to G.S. 53C -8-1” without going through rulemaking. The authority cited by the agency in (a) and (b) of that statute pertains to the COB’s authority to deal with banks themselves and settle various issues, not authority to set procedural requirements affecting the rights of people outside the COB’s rulemaking authority. In (c) the COB’s authority to “issue letters of interpretation, advisory opinions, or written guidance” quite specifically “shall not have the force and effect of rules of law.”*

*The authority cited in the history note does not make any reference to the COB having any authority to set any of those “requirements” outside rulemaking.*

**§ 53C‑6‑15.  Establishment of branches.**

(a)        A bank may establish one or more branches in this State, whether de novo or by acquisition of existing branches of another depository institution, with the prior written approval of the Commissioner. The Commissioner's approval may be given or withheld, in the Commissioner's discretion, in accordance with the provisions of subsection (c) of this section.

(b)        A bank may establish branches in another state, whether de novo or by acquisition of existing branches of another depository institution, in accordance with the provisions of applicable federal law and the laws of the other state, upon prior written approval of the Commissioner. The Commissioner's approval may be given or withheld in the Commissioner's discretion in accordance with the provisions of subsection (c) of this section.

(c)        A bank seeking authority to establish a branch shall make application to the Commissioner in a form acceptable to the Commissioner. Not more than 30 days before nor less than 10 days after the filing of the application with the Commissioner, the applicant shall publish public notice of the filing of the application. The public notice shall contain all of the following:

(1)        A statement that the application has been filed with the Commissioner.

(2)        The physical address or location of the proposed branch, including street and city or town.

(3)        A statement that any interested person may make written comment on the application to the Commissioner and that comments received by the Commissioner within 14 days of the date of publication of the public notice shall be considered. The public notice shall provide the then current mailing address of the Commissioner.

(d)       A bank may conduct any activities at a branch in another state authorized under this section that are permissible for a bank chartered by the other state where the branch is located, except to the extent the activities are expressly prohibited by the laws of this State or by any rule or order of the Commissioner applicable to the bank.

(e)        Upon receipt of an application to establish a branch, the Commissioner shall conduct an examination of the pertinent facts and information and may request such additional information as the Commissioner deems necessary to make a decision on the application. In deciding whether to approve a branch application, the Commissioner shall take into account such factors as the financial condition and history of the applicant; the adequacy of its capital; the applicant's future earnings prospects; the character, competency, and experience of its management; the probable impact of the branch on the condition of the applicant bank and existing depository institutions in the community to be served; and the convenience and needs of the community the proposed branch is to serve.  (2012‑56, s. 4.)

**§ 53C‑6‑18.  Non‑branch bank business offices.**

(a)        A bank may establish one or more non‑branch bank business offices as defined by G.S. 53C‑1‑4(46):

(1)        If a proposed non‑branch bank business office will offer a product, service, or other type of business not previously engaged in by the bank, the bank shall provide the Commissioner with written notification of the intent to open the office. The notification shall include the proposed location of the office and a description of the business to be conducted at the office. If the Commissioner does not request additional information or object to its establishment within 10 days of the date of receipt of the notification, the non‑branch bank business office shall be deemed approved. In deciding whether to object to the establishment of a non‑branch bank business office, the Commissioner shall consider, without limitation, whether the business proposed to be conducted at the non‑branch bank business office is permissible for a bank, the costs of its establishment and ongoing operation and the impact of the costs on the bank's capital and profitability, and the ability of the bank's management to conduct the proposed business.

(2)        If a proposed non‑branch bank business office will offer only products, services, or other types of business already engaged in by the bank, the bank shall provide the Commissioner with written notification of the intent to open the office.

(b)        An out‑of‑state bank may establish and operate a non‑branch bank business office in this State upon written notice to the Commissioner.

(c)        A bank or an out‑of‑state bank may close a non‑branch bank business office at any time with notice to the Commissioner.

(d)       No deposits may be taken at a non‑branch bank business office.  (2012‑56, s. 4.)

**§ 53C‑8‑1.  Commissioner has authority to supervise banks.**

(a)        Every bank shall be under the supervision of the Commissioner. It shall be the Commissioner's duty to enforce the banking laws through the employees and agents of the OCOB. All banks shall conduct their business in a manner consistent with the banking laws.

(b)        The Commissioner may enter into written agreements, cease and desist order stipulations, cease and desist orders, consent orders, and similar arrangements with banks and their holding companies, or either of them; may request resolutions be approved by boards of directors of banks and their holding companies, or either of them; and may take other similar corrective actions.

(c)        Upon written request, the Commissioner may, notwithstanding any other provision of law to the contrary, issue letters of interpretation, advisory opinions, or written guidance on any laws under the Commissioner's jurisdiction, provided that the interpretations, opinions, and guidance shall not have the force and effect of rules of law.  (2012‑56, s. 4.)