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: N.C. COMMMISSIONER OF BANKS

RULE CITATION: 04 NCAC 16A .0301

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:

*In (a) the rule requires a petitioner to “possess such an interest in the question to be ruled on that the petitioner’s need to have such a ruling ... shall be apparent from the petition.”*

*G.S. 150B-4 sets out the only statutory requirement for the status of a person seeking a declaratory ruling. The person must be a “person aggrieved.” G.S. 150B-2(6) defines a “person aggrieved” as “any person ... directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.”*

*There is no authority cited for the agency’s changing this requirement. If that is not what is meant or intended by this rule, then the rule is unclear.*

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AGENCY: N.C. COMMMISSIONER OF BANKS

RULE CITATION: 04 NCAC 16A .0302

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

X Unclear or ambiguous

 Unnecessary

 Failure to adopt the rule in accordance with the APA

 Extend the period of review

COMMENT:

*There is no authority cited for the Commissioner to wait 60 days to deny a request for a declaratory ruling as set out in (a). G.S. 150B-4(a1) requires the Commissioner to grant or deny the request within 30 days of receiving the petition.*

*For the same reason as set out in the recommendation to object to Rule .0301 there is no authority to deny a request because the “petitioner does not ... possess sufficient interest in the question to be ruled on” as set out in (b)(4). If a petitioner is a “person aggrieved” under the APA then by definition they have “sufficient interest” to petition and the agency must deny the petition for some other reason.*