Approved March 23, 1983
Date

MINUTES OF THE House COMMITTEE ON Commercial and Financial Institutions.

The meeting was called to order by Representative Harold P. Dyck at
Chairperson

3:30 ~~a.m.~~/p.m. on March 22, 1983 in room 527-S of the Capitol.

All members were present except:

Representative Holderman, excused

Committee staff present:

Bill Wolff, Legislative Research
Bruce Kinzie, Revisor of Statutes' Office
Martha Evans, Committee Secretary

Conferees appearing before the committee:

John O'Leary, Jr., Kansas Bank Commissioner
Jim Turner, Kansas Savings & Loan League
Jim Maag, Kansas Bankers Association

After calling the meeting to order Chairman Dyck announced that the hearings scheduled for March 22 would begin.

SB 58 - An act relating to the bank commissioner; providing for a deputy commissioner; amending K.S.A. 75-3135 and repealing the existing section.

Mr. O'Leary explained that the purpose of the bill was to change the position of the Assistant Bank Commissioner from classified to unclassified, changing the name of the position to Deputy Bank Commissioner, and spelling out requirements for the position and the authority given the position in the absence of the Bank Commissioner. Mr. O'Leary said that presently 32 states have designated the second man as Deputy Commissioner and that by changing this position from classified to unclassified more lattitude would be given the Commissioner in the selection of his deputy. He urged the committee to pass the bill favorably. (Attachment 1)

SB 227 - An act relating to trust companies; amending K.S.A. 17-2015, 17-2023, and 17-2024 and repealing the existing sections.

Bank Commissioner O'Leary testified on this "clean-up" bill also. He said his department had requested the bill to delete some questionable language and to make it clear that a trust company needs the approval of the State Banking Board to make a change of location. Additionally, the fee for such a move would be up-dated from $200 to $500, which is the same as for a bank move. He noted that there was also an up-date in the application fee for a new charter for a trust company and a clarification of the rules and regulations for the same. He asked the committee to pass this bill also. (Attachment 2)

SB 319 - An act relating to savings banks; amending K.S.A. 17-5525 and repealing the existing section.

Jim Turner, representative of the Kansas Savings & Loan League, told the committee that this bill would make any reference in the Kansas statutes to federally chartered savings and loan associations to also include any federally chartered savings banks. He explained that the Garn Act of 1982 allowed for the conversion of federally chartered savings and loan associations to federal savings banks and SB 319 was needed because of this. He said that this bill would assure federal savings banks in Kansas that they were in conformity with the state's law governing savings associations. He said that this bill would save having to amend over 70 laws separately. (Attachment 3)

SB 75 - An act relating to credit unions; concerning certain accounts and loans; relating to membership therein; concerning conversion thereof; amending K.S.A. 17-2216, 17-2216a, 17-2219 and 17-2222 and K.S.A. 1982 Supp. 17-2213 and repealing the existing sections.

Chairman Dyck called upon Dr. Bill Wolff of the legislative staff to report on SB 75 as was requested at the March 17 meeting.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Bill Wolff reported that in Section 1, Sub-section (d), lines 61 and 62 were referring to individual retirement plans and keogh plans and these are the only two that were addressed by this bill.

Representative Teagarden moved that SB 75 be reported favorably out of committee. Representative Jarchow seconded the motion and the motion carried.

SB 64 - An act relating to banks and banking; concerning the powers thereof; relating to the board of directors; amending K.S.A. 9-701, 9-1101, 9-1114 and 9-1116 and repealing the existing sections.

Jim Maag appeared for the Kansas Bankers Association who had requested this bill. He explained that the bill would conform Kansas banking statutes to the Garn Act such as SB 55 had done for the savings and loans. He further explained the need for the bill referring to the written testimony he had distributed; to expand the investment authority of state chartered banks; to make clarifying amendments regarding stock ownership; and to grant bank directors greater flexibility on the calling of their meetings. (Attachment 4) He asked that the committee amend the time that this act would take effect if passed.

Representative Ott moved that the bill be amended in Section 6 to take effect and be in force from and after its publication in the state register in lieu of its taking effect and being in force from and after its publication in the statute book. Representative Louis seconded the motion and the motion carried.

Representative Jarchow moved that the minutes of the March 17, 1983 meeting be approved. Representative Louis seconded the motion and the motion carried.

The meeting was adjourned by the chairman at 4:32 p.m.

The next meeting of the committee will be held at 3:30 p.m. on March 23, 1983.

DATE March 22, 1983

GUEST REGISTER

HOUSE

COMMERCIAL & FINANCIAL INSTITUTIONS

NAME	ORGANIZATION	ADDRESS
Greg Doner	Metro Enterprises, Inc.	Wichita
John N. O'Leary Jr	Bank Comm.	Topeka
Carl K Sandstrom	Asst " "	"
Marvin Umholtz	KCUL	"
Jim Turner	KSLL	Topeka
Tom Wilder	KSLL	Topeka
John Peterson	Ks Assn for Economic Growth	Topeka Ks
Ron Smith	KIBA	Topeka

TESTIMONY OF THE
KANSAS BANKING DEPARTMENT

on SB 58, providing for a Deputy Bank Commissioner

Presented to the

House Commercial and Financial Institutions Committee

March 22, 1983

Mr. Chairman and Members of the Committee:

Senate Bill 58 has been initiated by the Banking Department to amend the following:

(1) Changing title of the Assistant Bank Commissioner to that of Deputy Commissioner.

(2) To change this classified position to unclassified.

(3) To amend the statutes which have been silent to give the Deputy Commissioner authority to act in the absence of the Commissioner.

(4) To spell out the requirements of anyone who is being considered for the appointment as a Deputy Commissioner.

(1) Currently, thirty-two states have designated the second man as Deputy Commissioner; also different departments within the state organization have Deputies; i.e., Deputy Attorney General and Deputy Fire Marshall.

(2) The changing of the position from classified to unclassified would give a Commissioner more latitude in determining who should be his Deputy. Ordinarily, this is no problem but should the Commissioner and Deputy be unable to work together this would be detrimental to the banking system in Kansas.

(3) The statute is silent in regard to the authority of the Assistant Commissioner has in the absence or inability of the Commissioner to carry out his requirement. The Commissioner, Mr. Carl O'Leary, in 1971, was incapacitated and this question was addressed to the Attorney General and his reply is attached. Also, Commissioner Roy Britton was in England and China during his tenure and was also incapacitated by hospitalization

3/22/83
Attachment 1
HSE C&FI COMMITTEE

last summer and because of this resigned and there was a void of about two weeks between July 6th and July 19th when the present Commissioner, John A. O'Leary, Jr., took over.

(4) The current requirements are eight year's experience in the examination of banks and allied financial enterprises. The requirement, as spelled out in the amendment, broadens the scope that the Commissioner could select a Deputy Commissioner from.

CRSandstrom/jas

CARL O'LEARY
BANK COMMISSIONER

E. J. HOGAN
ASST. BANK COMMISSIONER

STATE OF KANSAS

BANKING DEPARTMENT

TOPEKA

RECEIVED
NOV 29 1971

November 23, 1971

Mr. E. J. Hogan
Assistant State Bank Commissioner
State Office Building
Topeka, Kansas

Re: Authority of Assistant Bank Commissioner to Act in the Stead of the Bank Commissioner

Dear Ed:

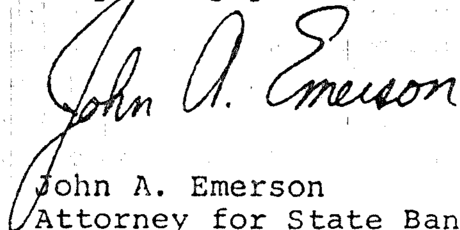
I enclose copies of correspondence received from the office of the attorney general regarding our recent inquiry on the extent of the power of the assistant bank commissioner during the absence of the commissioner.

You will note that Mr. John R. Martin, First Assistant Attorney General, concludes that, in the absence of specific statutory restriction, the assistant bank commissioner may act in the stead of the bank commissioner in his absence, even to the extent of sitting on the state charter board. So far as I can recall, none of the provisions of the banking code contains any specific restriction or requirement that the commissioner act "personally".

While it would thus appear that you have authority to act in matters requiring the commissioner's approval in the absence of Mr. O'Leary, I would suggest that such authority be exercised only where absolutely necessary. Decisions that can reasonably be deferred until Mr. O'Leary's anticipated return should be so deferred.

If you have any questions in the matter, please call me.

Very truly yours,



John A. Emerson
Attorney for State Bank Commissioner

JAE/bnb
Encs.

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

RECEIVED
NOV 19 1971
BANK COMMISSIONER
TOPEKA, KANSAS

November 19, 1971

Mr. John A. Emerson
State of Kansas
Banking Department
Topeka, Kansas

Dear Mr. Emerson:

Mr. Collister has asked me to reply to your letter of November 16, 1971, concerning the powers of the assistant banking commissioner during the illness of Commissioner Carl O'Leary. I enclose a copy of Opinion No. 71-75-9, the only prior opinion of the Attorney General which deals, albeit remotely, with the delegation of duties by a public officer, in that case, the Attorney General himself.

K.S.A. 75-2301, cited in that opinion, provides that members of the school fund commission (the Attorney General, Secretary of State, and a member from the state board of education), "when acting as such, must act personally." Numerous other statutes prescribing the duties of the Attorney General contain no similar requirement that he act personally. Absent such a requirement, we infer, of course, that he may act through lawfully authorized assistants. Analogously, it would appear that the assistant banking commissioner has no authority to act in matters which require his personal attention. As an example, he is a member of the state charter board, the authorizing statute of which does not require, unlike the school fund commission statute, that its members act personally. Accordingly, the assistant commissioner could doubtless act in his stead. It seems at least reasonable to apply the same rationale to banking matters themselves, when the state does not specifically require his personal action, forbidding any delegation to his assistant. However, should the assistant commissioner's authority be questioned in specific cases, I would be happy to discuss such questions with you.

Yours very truly,

John R. Martin

JOHN R. MARTIN
First Assistant Attorney General

JRM:sbs
Enclosure

TESTIMONY OF:

KANSAS BANKING DEPARTMENT ON SB 227 RELATING TO TRUST COMPANIES.

PRESENTED TO:

THE HOUSE COMMERCIAL & FINANCIAL INSTITUTIONS COMMITTEE.

MARCH 22, 1983

MR. CHAIRMAN, MEMBER OF THE COMMITTEE:

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE TO PROVIDE NECESSARY COMMENTS ON SB 227.

THE AMENDMENT TO K.S.A. 17-2015 is to delete some questionable language of this statute and, thus make it clear that should a trust company desire to change location they need the approval of the State Banking Board. (See AG Opinion 81-189) Also, the fee has been up-dated from the nominal fee of $200 to $500, same as now required for any bank desiring to change location; see K.S.A. 9-1804 attached.

The amendment to K.S.A. 17-2023 is to clarify the requirement of a new charter application by stating the rules and regulations applicable to bank applications are also applicable to trust company applications. See rules and regulation 17-16-1 and letter to Attorney General dated December 9, 1982, requesting guidance on this subject.

The amendment to K.S.A. 17-2024 is to up-date application fee to be in line with bank charter applications, K.S.A. 9-1803.

CRSandstrom/jas

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-375
ANTITRUST 296-5299

August 12, 1981

ATTORNEY GENERAL OPINION NO. 81-189

Roy P. Britton
State Bank Commissioner
818 Kansas Avenue, Suite 600
Topeka, Kansas 66612

Re: Trust Companies and Business Trusts -- Change of Trust Company's Location -- Approval of Bank Board

Synopsis: Those provisions of K.S.A. 17-2015 which require the state banking board's approval of a trust company's change in location are applicable to a trust company wherein moneys are currently on deposit. Accordingly, since Colonial Trust Company in Abilene, Kansas has current savings and time deposits, that company's proposed move to Great Bend, Kansas is subject to approval by the state banking board. Cited herein: K.S.A. 1980 Supp. 9-701, K.S.A. 17-2001, 17-2001b, 17-2003, K.S.A. 1980 Supp. 17-2013, K.S.A. 17-2014, 17-2015.

* * *

Dear Commissioner Britton:

You have advised of the possible change in ownership of Colonial Trust Company and, in connection therewith, a move of that company's location from Abilene to Great Bend, Kansas. Accordingly, you have requested our opinion as to whether such change in location is subject to the approval of the state banking board pursuant to K.S.A. 17-2015.

K.S.A. 17-2015 provides in relevant part as follows:

> "No trust company which receives or is receiving deposits shall move or change its place of business from one city or township to another unless it first shall make and file with the state banking board an application so to do nor until such board shall give its written approval of such move or change." (Emphasis added.)

Accompanying your inquiry was a copy of a letter from counsel for Colonial Trust Company to the state banking board's general counsel, in which the trust company's attorney offers his opinion that the proposed change in location is not subject to the banking board's approval, because "Colonial Trust Company is not receiving deposits." You also have furnished us with a copy of the letter you received from the banking board's general counsel stating the opposite conclusion, but suggesting that an opinion of this office be obtained.

Initially, we observe that Colonial Trust Company's daily statement of June 2, 1981, which you provided us, reveals savings deposits in the amount of $442,311, which includes $104,174 in savings accounts and $338,137 in certificates of deposit. Moreover, we do not hesitate to conclude that such moneys being held by Colonial Trust Company are deposits within the meaning of K.S.A. 17-2015.

It is clear from various other provisions of K.S.A. 17-2001 <u>et seq</u>., particularly K.S.A. 17-2002b, 17-2003 and 17-2014, that moneys deposited with trust companies are subject to constraints similar to those imposed on state banks. It is appropriate, therefore, to note from K.S.A. 1980 Supp. 9-701, which defines various terms for the purpose of the state banking code, that the various deposits which may be accepted by state banks include a savings deposit, time certificate of deposit and time deposit, open account. Without burdening this opinion by setting forth the definitions of these various terms, suffice it to state that the moneys listed under "savings deposits" and "certificates of deposit" on Colonial Trust Company's June 2, 1981, daily statement of condition are encompassed within this statute's definitional framework. Such fact reinforces our conclusion that these moneys are deposits within the meaning of K.S.A. 17-2015.

Because neither the letter from Colonial Trust Company's attorney submitted with your request, nor the other materials you have furnished us, provide any insight as to the company's contention that it is not receiving deposits, we solicited further explanation thereof from the trust company's counsel. His response indicates that, since on or about January 1, 1979, when ownership of the Trust Company changed, "the Trust Company ceased opening new passbook and certificate accounts," and he also notes the "steady decline in the total deposits held by the Trust Company," by citing the decline in the company's total deposits from $589,000 on December 31, 1979, to $479,000 on December 31, 1980.

It is apparent from this response that the trust company's contention that it is not receiving deposits is predicated, at least in part, on equating "deposits" with "accounts," and

in our judgment, such premise is improper. The fact that the company has not opened any new accounts since the beginning of 1979 does not indicate that it has not received any deposits for that period of time. It merely reflects that the company has not accepted any new depositors. A deposit, on the other hand, is money placed with the trust company under one of the various types of contractual arrangements, and even though there has been a decline in the total amount of deposits, such fact does not necessarily indicate that the trust company is not currently receiving deposits.

In this regard, we have not been advised as to any legal impediment to a depositor adding moneys to an existing account. Thus, even though there has been a net decline in the moneys on deposit, such condition may well be the product of withdrawals in excess of deposits. It does not necessarily reflect the total absence of deposits.

Moreover, the trust company's attorney advises that the trust company has continued to renew governmental certificates of deposit and that there are currently $232,000 of state and local funds on deposit. He suggests that the only reason for continuing to renew these deposits is "to avoid losses which would have been incurred in closing those accounts." This he explains, as follows: "The Trust Company owns U.S. Treasury securities which are pledged to secure governmental deposits. Due to market conditions, these securities would have been substantially discounted if sold, resulting in loss to the Trust Company." Notwithstanding this policy consideration, the fact remains that the trust company has a continuing practice of receiving public funds on deposit.

Conceding that the trust company has not added any new accounts since early in 1979, and even assuming arguendo that none of the non-governmental depositors has placed additional moneys in existing accounts since that time, we believe that Colonial Trust Company is a "trust company which receives or is receiving deposits" within the purview of K.S.A. 17-2015.

The trust company's counsel suggests that such conclusion requires an unwarranted construction of this statute, i.e., it requires construing the phrase "receives or is receiving" such that "receives" in effect means "received." This suggestion is supported by citation to various rules of statutory construction which are all contingent on the premise that the language of K.S.A. 17-2015 is plain and unambiguous. While we are well aware of the rules of statutory interpretation cited by the trust company's counsel, we cannot agree with his premise that the statutory language in question is plain and unambiguous. Here, it is interesting to note that counsel for the trust company has not offered any explanation of

what this "plain and unambiguous" language means, other than to suggest that "receives" does not mean "received" and that the statutory provisions in question do not apply to his client.

In our judgment, the phrase "receives or is receiving" in 17-2015 ~~is ambiguous~~ at best and susceptible of various interpretations. The obvious purpose of this statute is to define those trust companies which must seek approval of the state banking board before changing location. However, even if we interpret this statute as applying only to trust companies which presently receive moneys on deposit, as we assume the trust company's counsel is suggesting, the provision in question is still not free of ambiguity, since the statute provides no guidance as to the time frame by which this is to be measured.

In determining whether a trust company is one "which receives or is receiving deposits," does K.S.A. 17-2015 restrict us to a consideration of today's activities only, or may we look beyond today's activities into the past? If so, how far in the past may we look before we must determine that a trust company is not currently receiving moneys on deposit? Clearly, to answer these questions by strict reference to the vague time frame of "the present" subjects the statute to a multitude of interpretations. It requires arbitrary decisions from which absurd results may obtain.

Thus, because of this ambiguity, we must resort to well-established judicial guidelines for statutory interpretation. A comprehensive statement of the rules pertinent here is set forth in Brown v. Keill, 224 Kan. 195 (1978), as follows:

> "The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute, even though words, phrases or clauses at some place in the statute must be omitted or inserted. (Farm & City Ins. Co. v. American Standard Ins. Co., 220 Kan. 325, Syl. ¶3, 552 P.2d 1363 [1976].) In determining legislative intent, courts are not limited to a mere consideration of the language used, but look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished and the effect the statute may have under the various constructions suggested. (State, ex rel., v. City of Overland Park, 215 Kan. 700, Syl. ¶10, 527 P.2d 1340 [1974].) In order to ascertain the legislative intent, courts are

> not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof _in pari materia_. When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the literal import of words or phrases which conflict with the manifest purpose of the legislature. (_Kansas Commission on Civil Rights v. Howard_, 218 Kan. 248, Syl. ¶2, 544 P.2d 791 [1975].)" _Id._ at 199, 200.

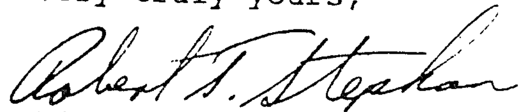
See, also, _Whitehead v. State of Kansas Labor Department_, 203 Kan. 159, 160, 161 (1979), and cases cited therein.

When the foregoing rules of construction are applied to the question presented here, we believe that the pertinent provisions of K.S.A. 17-2015 must be construed as requiring any trust company wherein moneys are currently on deposit to make application to and receive approval of the state banking board before changing its place of business from one city to another. Obviously, such construction provides a certainty of interpretation not afforded by construing the statute in the manner alluded to by Colonial Trust Company's counsel. Construing the statute in this fashion will avoid the ambiguity inherent in the alternative interpretation, which might bring into question the constitutionality of the statute. "[A] statute should never be given a construction that leads to uncertainty, injustice or confusion, if possible to construe it otherwise." _Whitehead v. State of Kansas Labor Department_, _supra_ at 162. Thus, the conclusion we have reached will permit a harmonious application of the statute's requirements by both the state banking board and the trust company.

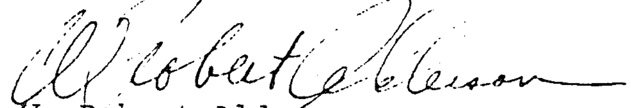
Moreover, it is apparent that our conclusion is consonant with the clear legislative intent manifested in K.S.A. 17-2001 _et seq_. to provide some measure of regulatory control over trust companies having moneys on deposit. As noted previously, there are several sections of this statutory sequence which impose greater regulatory constraints on such trust companies than on those which do not have moneys on deposit. An obvious purpose of these statutes is to afford protection to a trust company's depositors, and the interpretation we have placed on K.S.A. 17-2015 does nothing to jeopardize a harmonious construction of these statutes _in pari materia_.

In summary, it is our opinion that those provisions of K.S.A. 17-2015 which require the state banking board's approval of a trust company's change in location are applicable to a trust company wherein moneys are currently on deposit. Accordingly, since Colonial Trust Company in Abilene, Kansas has current savings and time deposits, that company's proposed move to Great Bend, Kansas is subject to approval by the state banking board.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:hle

SBL file

THE STATE OF KANSAS

BANKING DEPARTMENT

TOPEKA

JOHN A. O'LEARY, JR.
BANK COMMISSIONER

December 9, 1982

The Honorable Robert Stephan
Attorney General of Kansas
Kansas Judicial Center
Topeka, Kansas 66612

Dear General:

An application for authority to organize and transact business as a trust company has been filed with this office pursuant to K.S.A. 17-2022. I request the benefit of your advice regarding the following questions occasioned by this filing.

1. Are the rules and regulations of the State Bank Commissioner governing applications for certificates of authority found at K.A.R. 17-16-1, et seq., applicable to the processing of this application?

2. What is the authority of the State Bank Commissioner and State Banking Board to adopt rules and regulations governing applications for authority to organize trust companies?

3. Do K.S.A. 17-2022 and 17-2023, or any other statutes or principles of law, require that notice be given of the filing of an application to organize and transact business as a trust company and the investigation of the application by the State Banking Board and, if so, what notice is required?

Your early attention to this request for your advice will be appreciated so that the pending application may be processed without undue delay.

Very truly yours,

John A. O'Leary, Jr.
State Bank Commissioner

JAO:jas

cc: File (1)

application of the existing bank to change its place of business and disapprove the application or applications for incorporation and authority to do business. (L. 1977, ch. 45, § 4; July 1.)

9-1803. Expenses of examination and investigation; payment; use and disposition of moneys received. All expenses incurred in making any examination and investigation under K.S.A. 9-1802 shall be paid by the applicants, who shall pay one thousand dollars ($1,000) to the commissioner to defray all such expenses. The board may require an additional payment of not to exceed five hundred dollars ($500) at any time it deems it necessary. The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate special account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the examination and investigation to which it relates and any unused balance shall be transferred to the state general fund. Any members of the board who make such an examination or investigation shall be paid the sum of thirty-five dollars ($35) per diem for the time they actually are engaged in performing their duties as members of such board, and in addition thereto, shall be paid all their actual and necessary expenses incurred in the performance of such duties from such funds. (L. 1975, ch. 44.)

9-1804. Place of business; change of; application, investigation and approval; expenses of examination and investigation; payment; use and disposition of moneys received. No bank incorporated under the laws of this state shall change its place of business, from one city or town to another or from one location to another within the same city or town, without the prior approval of the state banking board. Any such bank desiring to change its place of business shall file written application with the board in such form and containing such information as the board shall require. The board shall examine and investigate the application, and shall inquire into the public necessity for such bank in the community wherein it is proposed to locate the same, and thereafter shall approve or disapprove the application. The expenses of such examination and investigation shall be paid by the bank which shall deposit with the commissioner therefor the sum of five hundred dollars ($500) and such further sums as are required by the commissioner. Any members of the board who make such an examination or investigation shall be paid the sum of thirty-five dollars ($35) per diem for the time they actually are engaged in performing their duties as members of such board, and in addition thereto shall be paid all their actual and necessary expenses incurred in the performance of such duties from such funds. The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate special account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the examination and investigation to which it relates, and any unused portion of such deposit shall be refunded to the bank. (L. 1975, ch. 44.)

9-1805. Removal of officer or director; notice and hearing; appeal. If it shall come to the attention of the board that any officer or director of any bank or trust company has been dishonest, reckless or incompetent in performing his or her duties as such officer or director or willfully or continuously fails to observe any order of the commissioner or board legally made, the board, upon proof thereof, may remove such officer or director in the following manner. The board, in a notice signed by the commissioner, shall notify such officer or director by mail that it has been informed that he or she has been dishonest, reckless or incompe-

In addition, notice of said hearing shall be furnished to the chief executive officer of any state or national bank, whose main banking office or detached facility is located within a radius of 25 miles from the proposed site, by the office of the state banking department. The list of such persons to whom notice has been given shall be available for inspection in the office of the state bank commissioner. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978.)

17-16-6. Transcript of hearing. At said local hearing, applicants for said proposed bank shall present all such matters as applicant believes material in support of those criteria prescribed by K.S.A. 9-1803. All proceedings of said investigating subcommittee at said hearing shall be recorded by a certified shorthand reporter, and all documentary matter submitted by the applicant or any other person at said hearing shall be marked as an exhibit to the transcript thereof. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978.)

17-16-7. Copies of transcript. Upon completion of the transcript of said hearing, a copy thereof shall be filed in the office of the state bank commissioner, and one copy furnished to each member of the state banking board not less than fourteen days prior to the meeting at which said application is considered. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978.)

17-16-8. Statements in support or opposition of application. In the notice published as stated above of said investigating subcommittee hearing in the community where the proposed bank is to be located, and in the notice furnished to any interested party as aforesaid, there shall be a notice that any interested party may submit in writing a statement in support of or opposing said application, which shall be filed in the office of the state bank commissioner, and that any such statement may be filed not later than ten days after the completion of the local hearing conducted by the investigating subcommittee.

The applicant shall be notified of the receipt of any such statement, and, at the expense of the applicant, furnished a copy thereof. The applicant shall be entitled to respond to any such statement, either in writing or by personal appearance before the full state banking board. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978.)

17-16-9. Consideration of application by board. At the regular meeting of the board held next after each member thereof has been furnished a transcript of the proceedings of the investigating subcommittee for a period of not less than fourteen days, or at any meeting thereafter as designated by the chairman of the board, said application shall be considered by the board, and the board shall approve or disapprove said application. In either event, no action by the board shall be final until a statement of findings of fact in support of said action shall have been prepared by such person designated to do so by the chairman thereof, circulated to and signed by those members voting thereon, and filed in the office of the state bank commissioner. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978.)

INSTALLMENT LOANS

Daily payment journal	2 years
Trial balance (if only complete history on borrower)	5 years
New loan report	2 years
Loans paid report	2 years
Past-due report	Optional

(Authorized by K.S.A. 9-1713; effective May 1, 1978.)

Article 16.—CHARTER APPLICATIONS

17-16-1. Filing of application. Each application for a certificate of authority shall be filed with the state banking commissioner, at his offices in Topeka, Kansas. The application shall be filed by filing the original and nine copies thereof. Any supplemental application, and any other documentary matter submitted by the applicant pertaining to this application shall be submitted only by filing with the state bank commissioner. Any supplemental application, together with any documents submitted in support thereof, with the exception of correspondence, shall be filed together with nine copies thereof. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978.)

17-16-2. Contents of application. The application shall contain the name of the proposed bank, and the address of the proposed bank. It shall contain in addition, the following:

1. The names and addresses of the officers, organizers and incorporators of the proposed bank, together with a descriptive statement of the financial standing and character of each such person; a formal financial statement is required to be submitted. All personal financial statements shall be kept confidential.

2. A statement of the character, qualifications and experience of the officers of the proposed bank.

3. A statement of the facts believed by the applicant to support a finding of public need for such bank in the community wherein it is proposed to locate same.

4. A statement of the names and addresses of national and state banks whose main banking office is located within a radius of 25 miles of the site of the proposed bank and of the address and name of each detached auxiliary banking facility located within a radius of 25 miles of the site of the proposed bank. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978.)

17-16-3. Presentation to board. Said application shall be presented to the board at its next regular meeting after the filing thereof. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978.)

17-16-4. Investigating subcommittee. Not later than six months after the filing of said original application, the chairman of the board shall appoint an investigating subcommittee of said board to conduct on behalf of the board an investigation pursuant to K.S.A. 9-1802. Said committee shall be composed of 3 persons, one of whom shall be designated chairman by the chairman of the full board. No person shall be appointed to said investigating subcommittee who is an officer of any state or national bank which has its main office or a detached auxiliary banking facility located within a radius of 25 miles of the site of the proposed bank, or any nonbanker member of [the] board who resides within a radius of 25 miles. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978.)

17-16-5. Hearing; notice. The investigating subcommittee shall conduct an investigation, which shall include a hearing located in the city in which the bank is proposed to be located. Notice of said hearing shall be published by incorporators in the official newspaper in such community, or if there be no such official newspaper, in an official newspaper in the county in which such city is located. Said notice shall be published not less than ten or more than thirty days prior to the date of said local hearing, and proof of publication shall be supplied to [the] bank commissioner in Topeka.

KANSAS SAVINGS & LOAN LEAGUE

SUITE 612 • 700 KANSAS AVE. • TOPEKA, KANSAS 66603 • PHONE (913) 232-8215

JAMES R. TURNER
PRESIDENT

March 21, 1983

TO: HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

FROM: JIM TURNER, KANSAS SAVINGS AND LOAN LEAGUE

RE: S.B. 319 (FEDERALLY CHARTERED SAVINGS BANKS)

The Kansas Savings and Loan League appreciates the opportunity to appear before the House Commercial and Financial Institutions Committee in support of S.B. 319. This proposal would amend K.S.A. 17-5525 to specify that any reference in the Kansas statutes to federally chartered savings and loan associations also includes federally chartered savings banks.

Recently the United States Congress approved the Garn-St. Germain Depository Institutions Act of 1982. Title I of this legislation permits federally chartered savings and loan associations to convert to a federal savings bank charter. Except for certain provisions of the internal revenue code, savings banks and savings and loan associations have the same powers and authority under federal law. Attached are the Federal Home Loan Bank Board regulations dealing with charter conversion.

The passage of S.B. 319 would assure those Kansas savings and loans which choose to convert to a federal savings bank charter that they are in conformity with Kansas law governing savings associations. An alternative would be to separately amend over seventy statutes which refer to savings and loan associations. We would appreciate the committee's earliest consideration of reporting S.B. 319 favorably for passage.

James R. Turner
President

JRT:bw

Encl.

REPRESENTING THE SAVINGS AND LOAN BUSINESS OF KANSAS

"MEETING HOUSING NEEDS AND HUMAN NEEDS"

Attachment 3

HSE C&FI COMMITTEE 3/22/83

(1) the Principal Supervisory Agent has recommended the imposition of nonstandard conditions prior to approving the merger;

(2) the Principal Supervisory Agent, notwithstanding the applicability of paragraphs (d)(1)(v) through (x) of this section, has determined that but for the merger, the merging institution would not satisfy minimum financial standards as determined from time to time by the Board's Office of Examinations and Supervision (*i.e.*, it is a failing institution); or

(3) the Principal Supervisory Agent has granted any of the following forbearances with respect to supervisory action:

(i) For purposes of the resulting institution's satisfaction of the net-worth calculation of §563.13(b) of this Part, the Principal Supervisory Agent may exclude, for up to a five-year period, operating losses on acquired assets, capital losses sustained by the resulting institution upon disposition of acquired assets, acquired scheduled items, and the amount of either (A) the net-worth deficiency at the date of merger, or (B) liabilities, including averaged liabilities, of the acquired institution;

(ii) For purposes of calculating the liquidity requirements of §§523.11(a) and 523.12 of this Chapter, the Principal Supervisory Agent may exclude, for up to one year, any liquidity deficiency which the acquired institution has and, also for one year, any aggregate net withdrawals from the acquired institution;

(iii) For purposes of calculating the resulting institution's investments under §545.10(a) of this Chapter, the Principal Supervisory Agent may exclude the building investments of the acquired institution;

(iv) For the purpose of calculating any holding company net-worth maintenance requirement, the Principal Superisory Agent may exclude, for up to a five-year period, the assets and liabilities balances of the acquired institution; and

(v) For purposes of calculating the eligibility of the resulting institution under §§545.9(h)(1), 545.9-1(d)(2) and (4), and 563.8(e)(1) of this Chapter, the Principal Supervisory Agent may, for a five-year period, compute net worth in accordance with subparagraph (3)(i) of this paragraph (e) and may, for a five-year period, exclude from scheduled items those scheduled items acquired in the merger.

For purposes of this paragraph (e)(3), the Principal Supervisory Agent may agree to forbear from taking supervisory action if the acquiring institution can demonstrate, by projections or otherwise, that its net worth will be adversely affected by the merger within a five-year period. The Principal Supervisory Agent may approve, with the concurrence of the Director of the Board's Office of Examinations and Supervision, the renewal of any supervisory forbearances, for up to five additional years, where the institution can demonstrate the need for extended supervisory forbearances, a record of substantial corrective action and the extent of noncompliance caused by the acquisition of the acquired institution.

The authority to approve mergers under this paragraph (e) is discretionary with the Principal Supervisory Agent. It is expected that when a merger subject to these delegations raises significant issues of law or policy for which the Corporation has not estblished a formal position, the Principal Supervisory Agent will refer that merger application to the Corporation for its consideration.

PART 563b — CONVERSIONS FROM MUTUAL TO STOCK FORM

1. Amend §563b.4(b)(1) by substituting the number "10" for the number "20" in the second paragraph of the Notice set forth in that subparagraph.

(Section 5 of the Home Owners' Loan Act, 48 Stat. 132 (12 U.S.C. §1464); secs. 402, 403, and 407 of the National Housing Act, 12 U.S.C. §§1725, 1726, & 1730; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1071 (1943-48 Comp.))

By the Federal Home Loan Bank Board

FHLBB FINAL RULE ON CHARTER CONVERSIONS

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 523, 541, 543, 544, 545, 546, 547, 549, 552, 561, 563, 563b, 564, 565, 569a, 575, 576, 577, 578, 583, and 584

Charters and Bylaws Available to Federal Associations, and Related Amendments; Processing of Applications

AGENCY: Federal Home Loan Bank Board

ACTION: Final rule; Request for comments

SUMMARY: In order to implement statutory revisions contained in Public Law 97-320, the Garn-St Germain Depository Institutions Act of 1982, the Federal Home Loan Bank Board has amended its regulations governing federal association charters. Under the amendments, all federal associations (or those seeking to convert to federal associations) may elect to be chartered either as federal savings and loan associations or as federal savings banks. In addition, federal charters, whether in the stock or mutual form, may be obtained by state-chartered savings banks without the requirement that they surrender their Federal Deposit Insurance Corporation ("FDIC") insurance in favor of insurance of accounts from the Federal Savings and Loan Insurance Corporation ("FSLIC"). No charter already issued will have to be amended if an institution is content with the *status quo*; any amendment will be purely a business decision for an institution. Because of the addition of FDIC-insured federal savings banks to the list of Board regulatees, numerous technical and conforming amendments have been made, particularly in the merger area. This, in large degree, has been required as a result of the fact that many regulations designed to apply to federal associations are cast in terms of whether an institution is an "insured institution," *i.e.,* one the accounts of which are insured by the FSLIC.

As an additional matter, the Board also is consolidating its application process for all *de novo* federal mutual associations. The amendments will combine the Permission to Organize application and the Petition for Charter application. The Board will propose *de novo* federal stock institution application regulations in the near future.

These changes should prove extremely beneficial to thrift institutions. A wider range of thrifts will have access to a greater variety of federal charter forms, and to the increased empowerments and flexibility that accompany those charters. Moreover, the process of applying to organize a federal association will be simplified and streamlined, benefiting those seeking to enter the thrift industry.

EFFECTIVE DATE: December 15, 1982; Comments must be received by February 22, 1983.

ADDRESS: Send comments to Director, Information Services Section, Office of Communications, Federal Home

Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION, PLEASE CONTACT: Randall H. McFarlane, Legislative Counsel, Office of General Counsel (202-377-6449), David A. Permut, Attorney, Office of General Counsel (202-377-6962), Diane Boyle, Office of District Banks (202-377-6720) or Donna K. Ralston, Attorney, Office of General Counsel (202-377-6421).

SUPPLEMENTARY INFORMATION:

CHARTERS AVAILABLE TO FEDERAL ASSOCIATIONS, AND RELATED AMENDMENTS

A. OVERVIEW

On October 15, 1982, the Garn-St Germain Depository Institutions Act of 1982 ("Act"), Public Law 97-320, was enacted. A major thrust of the Act is to broaden greatly the chartering and organizational options open to federal associations. Previously, federal associations could be organized on a *de novo* basis only as federal mutual savings and loan associations. The Board could charter federal savings banks, but only as mutual institutions with accounts insured by the FSLIC, and only as a direct consequence of a conversion from a state-chartered mutual savings bank. The Act not only permits *de novo* organization of federal savings banks, it allows any current or future federal association to be chartered either as a federal savings and loan association or a federal savings bank. Furthermore, federal charters, whether in the stock or mutual form, may be obtained by state-chartered savings banks without the requirement that they surrender their FDIC insurance in favor of FSLIC insurance of accounts. The Act also considerably broadens the statutory purposes of federal associations: prior to the passage of the Act, the basic purpose of a federal association was to act as a place for the investment of funds and as a source of investment for housing. The statutory purposes of federal associations now include the financing of all goods and services.

The Board has determined to respond to these changes basically by creating four new charter forms, which will be accessible to all federal mutual associations or those institutions qualifying to convert to federal associations. Any institution wishing to organize as, or convert to, a federal mutual savings bank will seek a Charter B (Revised) instead of a Charter B. An association desirous of organizing as, or converting to, a federal stock savings bank will elect a Charter T. Those that wish to organize as, or convert to, federal mutual savings and loan associations, will have to obtain a Charter N (Revised) rather than a Charter N, or a Charter L rather than a Charter K (Revised). All the new mutual charters contain conforming changes to reflect, as a result of the Act, the broader purposes of federal associations. Charter T follows the very broadly phrased language of Charter S (for federal stock savings and loan associations). Current holders of charters will not have to amend their charters or seek new charters unless they perceive a business or other benefit, such as the ability to operate as a federal savings bank. In the interest of rapid implementation of the Act, the Board has not attempted to make extensive changes in its previous charter forms, although it believes such changes may be appropriate. The Board intends, however, to examine the need for a broad restructuring of its charter forms in the near future, and has instructed its staff to develop proposals on this subject.

Because the Act provides, for the first time, for Board regulation of FDIC-insured institutions, it has been necessary to make a large number of amendments to prior regulations to permit these institutions to fit rationally into a regulatory scheme largely keyed to a description of regulatees as "insured institutions," i.e., institutions the accounts of which are insured by the FSLIC. Among the more important of these were amendments adjusting the Board's merger regulations to accommodate the presence of FDIC-insured organizations.

B. FEDERAL MUTUAL SAVINGS BANKS

Previous regulations governing federal mutual savings banks ("FMSBs") were found in 12 CFR Parts 575, 576, 577 and 578. Given the wider availability of the FMSB charter option, previously open only to converted state mutual savings banks, the removal by the Act of distinctions between FMSBs and other federal associations in such areas as branching and discrimination requirements, and the substantial changes made regarding grandfathering, it was determined to repeal those Parts, after making appropriate regulatory adjustments elsewhere in 12 CFR Part 544. Thus, 12 CFR 544.1(c) will contain Charter B (Rev.), the form that will be used by new FMSBs. That form will be virtually the same as the former Charter B, basically containing changes intended to conform to the broadened purposes of federal associations, the availability of authority to offer demand accounts as well as savings accounts, the repeal of former restrictions on equity, corporate bond and consumer loan investments, and the existence of FDIC-insured FMSBs not subject to FSLIC insurance reserve requirements. FMSBs, except as specifically noted in the regulations or their charters, will have the same powers and be subject to the same requirements as other federal associations.

C. FEDERAL STOCK SAVINGS BANKS

Federal associations (whether FSLIC-insured or FDIC-insured) wishing to operate as federal stock savings banks will do so under new Charter T, found at 12 CFR 552.3. Charter T essentially is Charter S with the phrase "Charter T" substituted for "Charter S," the words "Federal Savings Bank" substituted for the words "Federal Savings and Loan Association," and the word "bank" substituted for the word "association". Charter T associations will be regulated, except as specifically provided in their charters or by regulation, on the same basis as other federal associations. Any association in the mutual form must convert to the stock form pursuant to the provisions of 12 CFR Part 563b in order to obtain a Charter T.

D. FEDERAL SAVINGS AND LOAN ASSOCIATIONS

Charters for new mutual-form federal savings and loan associations previously were issued either as Charter N, under 12 CFR 544.1(a), or as Charter K (rev.), under §544.1(b). Charters issued under those provisions are being modified slightly to reflect changes resulting from the Act, and are redesignated as Charter N (Rev.) and Charter L, respectively. The changes involve restating the purpose of an association as being to pursue the lawful objectives of a federal association, rather than simply to promote thrift and economical home financing, and conforming the Charters, previously oriented only to holders of savings accounts, to reflect the existence of demand accounts.

E. ADOPTION BY FEDERAL ASSOCIATIONS OF NEW FEDERAL CHARTERS

Large numbers of federal associations have expressed interest in converting to federal savings banks. Under these amendments, a federal savings and loan association may become a federal savings bank (and vice versa) only in connection with a change of charter under 12 CFR 544.3.

This requirement is contained in 12 CFR 543.1(b), dealing with title changes. Section 544.3, which previously dealt only with changes to Charter K (rev.) from Charter N, now governs all situations where a federal mutual association seeks a new form of federal mutual charter, or a federal stock association seeks a new form of federal stock charter. The simple procedure of the old regulation, however, is preserved: when notified by an institution's board that a majority of the institution's members or stockholders have approved adoption of a new form of federal charter, the Board will issue the charter in the form desired, upon approval of any change sought in name or location. Approval of the change, however, now may be made by the Principal Supervisory Agent.

F. MERGERS

Previously, the merger regulations for federal mutual associations, found at 12 CFR Part 546, and for federal stock associations, found at 12 CFR Part 552, contemplated mergers only with FSLIC-insured institutions. With the provision of authority to charter FDIC-insured federal associations, it has been necessary to make certain regulatory adjustments. Accordingly, 12 CFR 546.1 (a) is amended to allow: under subparagraph (1), mergers between FSLIC-insured federal associations and other FSLIC-insured institutions, as per prior regulation; under subparagraph (2), mergers between FDIC-insured federal associations and other FDIC-insured institutions, provided laws applicable to the non-federal associations are complied with (for instance, the provisions of the Bank Merger Act (12 U.S.C. §1828)); and under subparagraph (3), mergers between FDIC-insured federal associations and FSLIC-insured institutions, subject to prior FDIC approval and compliance with such law as may be applicable to the non-federal associations involved. Additionally, the Board has amended §546.2(h)(5), which relates to the need for Board approval of mergers where the proposed resulting association has Community Reinvestment Act deficiencies or deficiencies in complying with the Board's nondiscrimination regulation, to exempt resulting associations that are neither federal associations nor FSLIC-insured, and that thus are outside the agency's jurisdiction in those areas. In a similar conforming change, §546.2(h)(6) is amended to exempt, in effect, mergers with resulting associations that are neither federal associations nor FSLIC-insured from a requirement that approval of mergers involving resulting associations not in compliance with the net-worth requirements of 12 CFR 563.13 must be by the Board. Other amendments include a revision of 12 CFR 546.1(a) to expand the definition of "association" to include commercial banks eligible to merge with a federal association, and a revision of 12 CFR 546.2(g), concerning the law governing effective dates of mergers, to cover the possibility of resulting associations other than federal associations that would not be subject to state law requirements.

Similar changes are made to the federal stock association merger regulations in 12 CFR 552.13. Section 552.13(c)(1), which previously limited merger partners to institutions insured by the FSLIC, is amended to stipulate that, where a transaction involves an FDIC-insured federal association, the constituent associations may be either FDIC-insured or FSLIC-insured (including interim federal and interim state associations). Another change in §552.13(b)(1) provides an additional exception to the rule that a mutual association must survive its merger with a Charter S or T association. This amendment incorporates the new exception into §552.13(c)(1) in conformity with an amendment to §563b.10 of the Rules and Regulations for Insurance of Accounts (12 CFR 563.10) which authorized, on a test case basis, the filing of applications for the non-supervisory merger of insured mutual institutions into insured stock institutions. (*See* Board Res. No. 82-390); 47 FR 24252 June 4, 1982. Section 552.13(b)(1) is revised to include commercial and industrial banks within the definition of association. In addition, the provision governing Board approval, §552.13(d), is amended, as required by statute, to require prior FDIC approval of mergers of FDIC-insured federal associations with entities not so insured, and §552.13(e), concerning board-of-director approval, is amended to acknowledge that state law may not always be determinative with respect to what procedure a board must observe to approve a merger. Finally, §552.13(l), dealing with effective dates of mergers, is revised to recognize that state law may not be the proper source of authority as to what date is proper where a resulting association is not a federal association.

G. DELEGATION OF AUTHORITY REGARDING STATE STOCK TO FEDERAL STOCK CONVERSIONS

On October 29, 1981, by Resolution No. 81-651 (46 FR 54722, November 4, 1981), the Board amended the Rules and Regulations for the Federal Savings and Loan System to provide in Section 552.2-1 (12 CFR §552-2.1) for the delegation of authority to the Principal Supervisory Agent of the appropriate Federal Home Loan Bank to approve applications for conversion of state-chartered stock savings and loan institutions to federally-chartered stock savings and loan institutions.

Based on its experience with conversion applications processed pursuant to Section 552-2.1, the Board has found that applications for conversion of state-chartered stock savings and loan institutions to federally-chartered stock savings and loan institutions for supervisory reasons may present significant legal issues or policy considerations requiring review by the Board's staff in Washington, D.C. Accordingly, the Board has determined to amend its delegation of authority to the Principal Supervisory Agent to approve state stock to federal stock conversion applications to delegate to the General Counsel the authority to approve conversion applications undertaken for supervisory reasons. The amendment does not affect the delegation of authority to the Principal Supervisory Agent to approve conversion applications not undertaken for supervisory reasons.

On March 26, 1980, by Resolution No. 80-202, the Board delegated to the Principal Supervisory Agent the authority to approve unprotested applications for conversion of state-chartered institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation to federally-chartered institutions conditioned upon the applicant's satisfaction of the criteria established in Section 543.9 and submission of evidence from the appropriate state authorities within six months from the date of the approval of the conversion application that the conversion is in conformance with state law. The first of these conditions is contained in Section 552-2.1. The Board has determined to amend Section 552-2.1 to include the second of these conditions in order to ensure that the conversion of state-chartered stock savings and loan institutions to federally-chartered stock savings and loan institutions complies with the applicable laws of the applicants' jurisdictions. However, in order to expedite the conversion process, the Board is requiring that the certification that the conversion is in conformance with state law be made by independent local counsel rather than by the appropriate state authorities.

H. MISCELLANEOUS, TECHNICAL AND CONFORMING AMENDMENTS

1. An amendment is made to Part 523 by adding a new

§523.3-2 authorizing the Principal Supervisory Agent to approve all unprotested FHLBank membership applications.

2. An amendment is made to 2 CFR 523.10(b)(1) to indicate that FDIC-insured banks may include stock-form as well as mutual-form savings banks.

3. An amendment is made to 12 CFR 541.8 to include all savings banks chartered under section 5 of the Home Owner's Loan Act as federal associations. Previously, the section only referenced federal savings and loan associations so chartered.

4. An amendment is made to 12 CFR 541.8-1 to delete the words "A savings and loan," thus allowing the Board to charter interim federal associations that are federal savings banks.

5. In order to clarify to whom questions should be directed regarding conversions to federal mutual charters, and the status of supervisory agent recommendations on same, 12 CFR 543.8 is amended to incorporate the substance of former 12 CFR 576.1, regarding mutual savings bank conversions. Similar language exists at 12 CFR 543.2(a), regarding permission to organize a federal association. In addition, §543.8 is amended to indicate that approval authority for conversions to federal charter is delegated to the Principal Supervisory Agent.

6. An amendment to 12 CFR 543.9(c) stipulates that an eligibility examination by the FSLIC is not a precondition to Board consideration of a request for a federal charter by an FDIC-insured savings bank. Section 543.9(d) is amended to delete reference to a repealed statutory requirement that a state institution seeking a federal charter must receive approval of 51 percent of its members. The question of consent now will be left entirely to state law. In addition, those sections, as well as §543.9(a), are amended to reflect delegation of authority to the Principal Supervisory Agent to approve conversion applications.

7. An amendment is made to 12 CFR 576.4, governing organization after conversion to federal charter of federal mutual savings banks, by redesignating it as 12 CFR 543.12, specifying that it applies only to FMSBs that immediately prior to conversion were state MSBs, and moving it to 12 CFR Part 543. A reference in the text of §576.4 is changed to §543.12, and a reference to §576.2 is changed to §544.2-2. In a related step, 12 CFR 543.11 is amended to supply a reference to the procedures in §543.12 as constituting an exception to the normal post-conversion organization rules for federal associations.

8. An amendment is made to 12 CFR Part 543 to create a new §543.13 that states that the Board may grant federal charters to FDIC-insured savings banks notwithstanding their failure to obtain FSLIC insurance of accounts.

9. An amendment is made to 12 CFR Part 543 to create a new §543.14 which states that the Board shall notify the FDIC of applications for federal charters by FDIC-insured institutions, shall consult with it before disposing of such an application, and shall notify it of the Board's determination with respect to the application.

10. An amendment is made to 12 CFR 544.2, concerning federal charter amendments, to indicate in the introductory text and paragraph (i) that it applies only to mutual savings and loan associations, and not to federal mutual savings banks, which are governed by another provision in this respect. Section 544.2(c) is amended to delete the word "savings", in recognition of the ability of federal associations to offer demand accounts as well as savings accounts, and Section 544.2(f) is revised to replace obsolete references to Charter N and Charter K (rev.) with references to Charter N (Rev.) and Charter L.

11. An amendment is made to 12 CFR 577.1-1, setting forth a preapproved mutual capital certificate amendment for federal mutual savings banks, to redesignate it as 12 CFR 544.2-1 and move it to 12 CFR Part 544, after removing existing §544.2-1.

12. An amendment is made to 12 CFR Part 544 to add a new §544.2-2, dealing with preapproval of federal mutual savings bank corporate title changes. The language is virtually identical to that of 12 CFR 577.1-2, repealed by these amendments, concerning the same subject.

13. An amendment is made to 12 CFR 544.5, regarding prescribed bylaws, to indicate they are applicable only to federal mutual S&Ls.

14. An amendment is made to 12 CFR 577.2, regarding bylaws for federal mutual savings banks, to redesignate it as 12 CFR 544.5-1 and insert it in Part 544 after 12 CFR 544.5, and to revise the introductory text to indicate that it applies only to federal mutual savings banks.

15. An amendment is made to 12 CFR Part 544 by adding a new §544.8, incorporating the substance of 12 CFR 578.1(b), removed by these amendments. Paragraph (a) essentially restates the provision in §578.1(b) that references in the regulations to federal mutual savings and loan charters shall also be deemed references to federal mutual savings bank charters, also stipulating that references to superseded mutual association charter forms shall be references to the new forms created by these amendments. Paragraph (b) duplicates the requirement in §578.1(a) that federal mutual savings bank trustees are subject to regulations applicable to federal savings and loan association directors.

16. An amendment is made to Part 544 by adding a new §544.9, stipulating that Charter B federal mutual savings banks no longer must comply with an obsolete charter provision restricting their corporate debt, equity, and consumer loan investments.

17. An amendment is made to remove 12 CFR 546.5, concerning conversions to the state mutual form under a now repealed provision of §5(i) of the Home Owner's Loan Act of 1933.

18. Amendments are made to 12 CFR 547.3, 547.6, 549.1(b), 549.2 and 549.3, relating to receiverships, to provide for the statutory requirement that the Board appoint the FDIC as receiver for FDIC-insured federal associations. In addition, the amendment to §547.6 deletes a confusing reference to liquidation as the sole purpose of a receivership.

19. An amendment is made to 12 CFR 549.5-1(a) to stipulate that federal savings bank receivers shall follow procedures for deposit associations. Amendments are made to §549.5-1(b) and (c) to provide for the fact that federal associations now may offer demand accounts, and not just savings accounts.

20. An amendment is made to the introductory text an paragraph (b) of 12 CFR 552.1 to state that references to Charter S associations also shall be deemed to be references to Charter T associations, and to define a Charter T association, in effect, as a federal stock savings bank. Old paragraph (b) is redesignated as paragraph (c).

21. An amendment is made to 12 CFR 552.2-1, dealing with conversions of state-stock associations to federal stock charters, to delete obsolete requirements pertaining to the date on which a state institution became a stock association, and to provide for conversion of state stock savings banks.

22. An amendment is made to 12 CFR 552.3(a) by adding a clarifying reference to Charter T associations.

23. An amendment is made to 12 CFR 552.9 to substitute references to Charter N (Rev.) for obsolete references to Charter N.

24. An amendment is made to 12 CFR 561.1 to add references to federal savings banks, interim federal associ-

ations, and interim state associations as institutions that may be insured by the FSLIC, and to stipulate that, except as specifically noted, FDIC-insured federal associations will be subject to regulations applicable to "insured institutions," as are other federal associations.

25. An amendment is made to 12 CFR 561.2, defining insured members, to stipulate that, for the purposes of the provisions, an "insured institution" shall not include an FDIC-insured federal association.

26. An amendment is made to 12 CFR 561.11 to include savings accounts held at FDIC-insured federal associations within the definition of "savings accounts".

27. An amendment is made to 12 CFR 563.7-1 to remove the term "savings and loan," thus clarifying that the provision, which deals with savings deposits or shares of federal associations, applies to federal savings banks.

28. An amendment is made to 12 CFR 563.7-4(a) to change the phrase "insured mutual institution" to clarify that it refers to all insured institutions, including FDIC-insured federal associations, that are in the mutual form.

29. Amendments are made to 12 CFR 563.14 regarding payment of dividends, to ensure its applicability to dividends paid to accountholders by FDIC-insured savings banks.

30. Amendments are made to 12 CFR 563.15, and 563.16 regarding insurance premiums, to specify that the provisions do not apply to FDIC-insured federal associations.

31. An amendment is made to 12 CFR 563.22, regarding mergers of insured institutions involving increases in accounts of an insurable type, to stipulate that an FDIC-insured federal association is not an insured institution for purposes of that provision.

32. An amendment is made to 12 CFR 563.28 to indicate that an FDIC-insured federal association is prohibited from advertising itself as a member of the FSLIC.

33. An amendment is made to 12 CFR 563.31 by revising paragraph (a) to state that an FDIC-insured federal association may not obtain deposit insurance in addition to that provided by the FDIC, paralleling the requirement that FSLIC-insured institutions obtain insurance on accounts only from the FSLIC. In addition paragraph (b)(1) is amended to provide that federal savings banks may give bond or security, and not just federal savings and loan associations.

34. Amendments are made to 12 CFR 563.3b(b)(4), 563b.4(a)(xiv), and 563b.4(b) to clarify that federal stock charters are available to federal associations insured by the FDIC.

35. Amendments are made to 12 CFR 563b.8(d)(2) and (3) to indicate that any eligible mutual, state or federal, may convert to either a Charter S or a Charter T, and that the corporate existence of the converting institution does not terminate.

36. Amendments are made to 12 CFR Parts 564 and 565, dealing respectively, with settlement of insurance and termination of insurance, to create new §§564.11 and 565.9, specifying that those Parts do not apply to FDIC-insured federal associations.

37. Amendments are made to 12 CFR Part 569a, dealing with receivers of non-federally chartered insured institutions, by changing the heading to reflect the existence of federal associations other than federal savings and loan associations, and by revising §569a-1(a) to insure the non-applicability of that section to federal savings banks.

38. Subchapter E, dealing with rules and regulations for federal mutual savings banks, and consisting of 12 CFR Parts 575, 576, 577 and 578, is removed as obsolete, after relocation of appropriate provisions elsewhere.

39. An amendment is made to 12 CFR 583.5 to indicate that an insured institution subsidiary of a savings and loan holding company may be doing a savings bank business as well as a savings and loan business.

40. An amendment is made to 12 CFR 583.6 to include as insured institutions all federal associations insured by the FSLIC or the FDIC.

41. An amendment is made to 12 CFR 583.7 to specify that an uninsured institution does not include a federal association insured by the FDIC.

42. An amendment is made to 12 CFR 584.1(e) to indicate that an insured institution may be doing a savings bank business as well as a savings and loan business.

CONSOLIDATION OF APPLICATIONS

The Board has determined to amend 12 CFR Part 543 to consolidate applications provided for all *de novo* federal mutual associations. The amendments involve combining the Permission to Organize application and the Petition for Charter application. Formerly, associations had to go through a two-step procedure in order to receive a federal charter. The first step was an application for permission to organize a federal association, which required numerous procedures and conditions. Upon compliance with these conditions, the applicants then had to submit a second application for petition for charter. This application also required numerous procedures and conditions. In combining the two applications, the Board will expedite the application process, delete several unnecessary or duplicative conditions, and cause the application process to apply to all types of new federal charters.

FINAL REGULATORY FLEXIBILITY ANALYSIS

Although the regulations promulgated herein have not been proposed for public notice and comment, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objective and legal basis underlying the final rule.* These elements are incorporated above in the supplementary information and definitional sections regarding the regulation.

2. *Small entities to which the final rule would apply.* The final rule would apply equally to all institutions chartered by the Board.

3. *Overlapping or conflicting federal rules.* There are no known Federal rules that may duplicate, overlap or conflict with the final regulation.

4. *Alternatives to the final rule.* To the extent that any institution determines to adopt a new charter, the final regulation would benefit its operations. Increased flexibility for all institutions will result from this regulation as well as increased power for federal associations. The final regulation will not have a disproportionate impact on small institutions, and there is no alternative action that would change the impact of broadened chartering authority on small institutions.

List of Index Subjects

12 CFR Parts 541, 543, 544, 545, 546, 547, 549, 552, 575, 561, 563, 563b, 564, 565, 569a, 576, 577, 578, 583 and 584

Savings and loan associations

The Board finds that the public notice and comment procedures of 5 U.S.C. 503(b) and 12 CFR 508.13 are unnecessary for the following reasons: (1) Immediate regulatory action is in the public interest in that the Congress expressly intended, in passing the Garn-St Germain Depository Institutions Act of 1982, that Federal associations and other thrift institutions exercise increased organizational flexibility to meet current, extremely stressful economic conditions, and it will increase the availability of this new power to federal associations; (2) Most federal associations have annual meetings in the first month of the calendar year, notice of which

must go out to shareholders 15 to 45 days in advance, and any change in charter would of necessity need to be considered at such a meeting; (3) It will expedite the processing of applications for the several Federal charters; and (4) It will relieve restrictions. The Board further finds that delay of the effective date of this regulatory action pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary for the same reasons.

Since there are a large and complex number of changes in these regulations, in particular in easing bylaw requirements, the Board is soliciting comments from the public as to the effect of these regulations.

Accordingly, the Board hereby amends Part 523 of Subchapter B, Parts 541, 543, 544, 545, 546, 547, 549 and 552 of Subchapter C, Parts 561, 563, 563b, 564, 565, and 569a of Subchapter D, Parts 575, 576, 577 and 578 of Subchapter E, and Parts 583 and 584 of Subchapter F, Chapter V of Title 12, *Code of Federal Regulations*, to read as set forth below.

SUBCHAPTER B — FEDERAL HOME LOAN BANK SYSTEM

PART 523 — MEMBERS OF BANKS

1. Part 523 is amended by adding a new §523.3-2, to read as follows:

§523.3-2 *Delegations.* The Principal Supervisory Agent, as that term is defined in §545.14(a)(3)(i) of this Chapter, is authorized to approve unprotested applications for Bank membership filed by an entity which is eligible for such membership and which satisfies the criteria therefor.

2. Amend subparagraph (1) of paragraph (b) of §523.10 by striking the term "mutual".

SUBCHAPTER C — FEDERAL SAVINGS AND LOAN SYSTEM
SUBCHAPTER E — RULES AND REGULATIONS FOR FEDERAL MUTUAL SAVINGS BANKS

PART 541 — DEFINITIONS

3. Amend §541.8 to read as follows:

§541.8 *Federal association.*

A savings and loan association or savings bank chartered by the Board under section 5 of the Act and, except as the Board may otherwise provide, any building and loan, savings and loan, building, of homestead association, organized or incorporated under the laws of the District of Columbia.

4. Amend § 541.8-1 by removing the phrase "A savings and loan" and inserting in lieu thereof the word "An".

PART 543 - INCORPORATION, ORGANIZATION, AND CONVERSION

PART 576 - APPLICATION, ISSUANCE OF CHARTER AND BYLAWS, ORGANIZATION

5. Amend § 543.1 by revising the third sentence of paragraph (b), to read as follows:

§543.1 *Corporate title.*

* * *

(b) *Title change.* Prior to changing its corporate title, an association must file with the Supervisory Agent a written notice indicating the intended change. The Supervisory Agent shall provide to the association a timely written acknowledgment stating when the notice was received. If, within 30 days of receipt of notice, the Supervisory Agent does not notify the association of his or her objection on the grounds set forth in paragraph (a) of this section, the association may change its title by amending its charter in accordance with § 544.2(i), or § 544.2-2, or § 552.4(c) and the amendment provisions of its charter, except that an association chartered as a Federal Savings and Loan Association may change its title to indicate that it is a Federal Savings Bank, and an association chartered as a Federal Savings Bank may change its title to indicate that it is a Federal Savings and Loan Association, only pursuant to adoption of a new charter pursuant to § 544.3 of this Chapter.

6. Amend § 543.2 by revising the third sentence of paragraph (b) and revising paragraph (g), to read as follows:

§ 543.2 Application for permission to organize.

* * *

§ 543.2(b) *Form; supporting information.* *** The applicants shall request a corporate title to be approved by the Board and to be included as section one of the association's charter.

* * *

§ 543.2(g) *Approval.* Decisions on all applications for permission to organize a Federal association will be made by the Board. Approvals of applications will be conditioned on the following: (1) a minimum amount of capital to be paid into the association's accounts prior to insurance of accounts; (2) the submission of a statement that (i) the applicants have complied in all respects with the Act and these rules and regulations regarding organization of a Federal association; (ii) the applicants have incurred no expense in forming the association which is chargeable to it, and no such expense will be insurred; (iii) no money will be collected on account of the association before the Board issues its charter; (iv) an organization committee has been created (naming the committee and its officers); and (v) the committee will organize the association when the Board issues its charter and serve as temporary officers of the association until officers are elected by the association's board of directors under § 543.6; and (3) the satisfaction of any other requirement the Board may impose. Approval of an application does not obligate the Board to issue a charter.

* * *

7. Remove § 543.3, with a direction to see § 543.6(a).

8. Remove § 543.4, with a direction to see § 543.2.

9. Amend § 543.6 by revising paragraph (a), to read as follows:

§ 543.6 *Completion of organization.*

(a)(1) *Temporary officers.* When the Board approves an application for permission to organize a Federal association, the applicants shall constitute the organization committee and elect a chairperson, vice-chairperson, and a secretary, who shall act as the temporary officers of the association until their successors are duly elected and qualified. The temporary officers may effect compliance with any conditions prescribed by the Board.

(2) *Organization meeting.* Promptly upon receipt of a charter, the temporary officers shall call a meeting of the association's capital subscribers; notice of such meeting shall be mailed to each subscriber at least 5 days before the meeting day. Subscribers who have subscribed for a majority of the association's capital, present in person or by proxy, shall constitute a quorum. At such meeting, directors of the association shall be elected according to the association's charter and bylaws, and any other action permitted by such charter and bylaws may be taken; any such action shall be considered an acceptance by the association of such charter and of such bylaws, which shall be in the form provided in Parts 544 and 552 of this subchapter.

10. Amend §543.8 to read as follows:

§543.8 *General.*

(a) With the approval of the Principal Supervisory Agent,

any member may, on such conditions as the Board may prescribe, convert itself into a Federal association, if it complies with all laws of its jurisdiction expressly providing for such conversions and with these rules and regulations.

(b) Questions regarding conversions shall be directed to the Board's Supervisory Agent of the district in which the applicant is located. Recommendations by Supervisory Agents and officers and employees of the Board regarding applications for issuance of Federal charters are privileged, confidential and subject to §505.6 of this chapter.

11. Amend §543.9 by revising the last sentence of paragraph (a), by revising paragraph (c), and by deleting paragraph (d), to read as follows:

§543.9 *Applications.*

* * *

(a) * * * The applicant shall submit any financial statements or other information the Board or the Principal Supervisory Agent may require, and pay all costs, as determined by the Principal Supervisory Agent or the Board, of consideration of the application.

* * *

(c) *Action on application.* The Principal Supervisory Agent will consider such application and any information submitted therewith, and may approve the application. All approvals will be conditioned upon compliance with paragraph (d) of this section. The Principal Supervisory Agent will not consider the application of a converting institution not insured by the Federal Savings and Loan Insurance Corporation, except in the case of a savings bank insured by the Federal Deposit Insurance Corporation, until an eligibility examination has been completed to the satisfaction of the Federal Savings and Loan Insurance Corporation. Approval of an application and issurance by the Board of a charter will be subject to the applicant's (1) compliance with all conditions prescribed in the approval; (2) receipt of approval of the plan of conversion by such vote as may be required by the laws of the applicant's jurisdiction to consider such action; and (3) approval of its application for Federal Home Loan Bank membership, if the applicant is not a member.

12. Remove §543.10.

13. Amend §543.11 redesignating it as §543.10 and by revising the first sentence, to read as follows:

§543.10 *Organization after conversion.*

Except as provided in §543.11, after a Federal charter is issued under §543.9, the association's members shall, after due notice, or upon a valid adjournment of a previous legal meeting, hold a meeting to elect directors and take all other action necessary fully to effect the conversion and operate the association in accordance with law and these rules and regulations. * * *

14. Amend §576.4 by redesignating it as §543.11, by removing the term "§576.4" wherever it appears therein and substituting therefor the term "§543.11", by removing §543.11 from Part 576 and inserting it in Part 543 immediately after §543.10, and by revising the first sentence of paragraph (a) of §543.11 to read as follows:

§543.11 *Organization, plan for governance during first years after issuance of Federal mutual savings bank charter.*

(a) *Organization meeting.* Except as provided in paragraph (c)(1), promptly upon receipt of a charter, the officers of a Federal mutual savings bank which, immediately prior to conversion, was a state-chartered mutual savings bank, shall call a meeting of the members. * * *

* * *

15. Amend §543.11 by striking the term "§576.2" in the fourth sentence of paragraph (a) and substituting therefor the term "§544.2-2".

16. Amend Part 543 to add a new §543.12, to read as follows:

§543.12 *FDIC-insured Federal savings banks.*

The Board may issue a Federal charter to a state-chartered savings bank which is insured or continues to be insured by the Federal Deposit Insurance Corporation notwithstanding the fact that the association does not obtain insurance of accounts from the Federal Savings and Loan Insurance Corporation.

17. Amend Part 543 to add a new §543.13, to read as follows:

§543.13 *Notice to FDIC.*

Upon receiving an application for a Federal charter by an institution insured by the Federal Deposit Insurance Corporation, the Board shall notify the Federal Deposit Insurance Corporation, shall consult with it before disposing of the application, and shall notify it of the Board's determination with respect to such application.

PART 544 — OPERATIONS
PART 577 — CHARTER AND BYLAWS

18. Amend §544.1 by revising the first sentence of paragraph (a) to read as follows:

§544.1 *Issuance of charter.*

(a) *Charter N (Rev.).* Except as provided in paragraph (b) of this section, when the Board approves an Application for Permission to Organize for a Federal mutual association that is a Federal savings and loan association, it shall issue a charter in the following form, or a form which includes any of the additional provisions set forth in §544.2 if such provisions are specifically requested, known as Charter N (Rev.). * * *

* * *

19. Amend §544.1 by removing the term "CHARTER N" as the heading at the beginning of the charter form, and replacing it with the term "CHARTER N (REV.)".

20. Amend the form for CHARTER N (REV.) contained in paragraph (a) of §544.1 by revising the introductory text and subsection (6) of section 3, the first sentence of section 4, and the last sentence of section 10, to read as follows:

§544.1 *Issuance of charter.*

(a) *Charter N (Rev.).* * * *

CHARTER N (REV.)

* * *

3. *Purpose and Powers.* The purpose of the association is to pursue any or all of all the lawful objectives of a Federal association; and in the accomplishment of such purpose, it shall have perpetual succession and power: * * *

(6) To raise its capital, which shall be unlimited, by accepting payments on savings and demand accounts representing share interests in the association; * * *

4. *Members.* All holders of the association's savings accounts and demand accounts and all borrowers therefrom are members. * * *

* * *

10. *Reserves, surplus and distribution of earnings.* * * * All holders of savings accounts and demand accounts of the association shall be entitled to equal distribution of assets, pro rata to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution or winding up of the association.

* * *

21. Amend the form for CHARTER N (REV.) contained in paragraph (a) of §544.1 by striking the term "savings" wherever it appears in section 4, other than in the first sentence, and wherever it appears in section 7.

22. Amend §544.1 by revising the intorductory text of paragraph (b), to read as follows:

(b) *Charter L.* If expressly requested in the Application for Permission to Organize, or in the Application for Conversion to a Federal Association, the Board will issue, in lieu of Charter N (Rev.), a Charter L. The form of Charter L is the same as the form of Charter N (Rev.), except that the heading states "CHARTER L" instead of "CHARTER N (REV.)" and in lieu of the provision in Charter N (Rev.) designated "6. *Withdrawals*", the following provision is substituted: * * *

23. Amend §577.1 by redesignating it as "§544.1(c)", and by removing new §544.1(c) from Part 577 and inserting it in Part 544 immediately after paragraph (b) of §544.1.

24. Amend paragraph (c) of §544.1 by removing the term "CHARTER B" as the heading at the beginning of the charter form, and replacing it with the term "CHARTER B (REV.)".

25. Amend the form for CHARTER B (REV.) contained in paragraph (c) of §544.1 by removing the phrases "established for the primary purpose of providing people with a convenient and safe place to invest their funds and to provide for the financing of homes, and", and "*General Objects and*" contained in section 3; by removing the word "savings" from section 6 wherever it appears, other than in the first sentence; by removing the phrase "in Board Resolution No. ____, dated ____, ____," in section 7 and substituting therefor the phrase "by the Board or its delegatee in in connection with action"; by removing the phrase "charter: *Provided, however*, That the bank's equity, corporate bond, and consumer loan investments may in no event exceed ____ percent of its assets." contained in section 10 and substituting therefor the phrase "charter"; by striking out in section 10 the phrase "Board Resolution No. ____ dated ____" and substituting therefor the phrase "action of the Board or its delegatee in connection with action"; by removing from the third paragraph of section 11, the word "savings" and the phrase "[and checking accounts]" wherever they appear; and by removing from section 11 the phrase "Board, such reserves shall include the reserve required for insurance of accounts.", and inserting in its place the word "Board".

26. Amend the form of CHARTER B (REV.) contained in paragraph (c) of §544.1 by revising section 5 and the first sentence of section 6, to read as follows:

§544.1 *Prescribed form.** * *

CHARTER B (REV.)

* * *

Section 5. *Capital.* The bank may raise capital by accepting payments on savings accounts and demand accounts and by any other means as may be authorized by the Board.

Section 6. *Members.* All holders of the bank's savings accounts and demand accounts and all borrowers therefrom are members.* * *

* * *

27. Amend §544.2 by revising the introductory text to read as follows:

§544.2 *Amendment of charter.*

This section constitutes approval by the Board of any of the following amendments to the charter of a Federal mutual savings and loan association:

* * *

28. Amend §544.2 by removing from paragraph (c) the word "savings"; by removing from paragraph (f) the phrase "Charter N or Charter K (rev.)" and substituting therefor the words "Charter N (Rev.) or Charter L"; and by removing from paragraph (i) the word "mutual" and substituting therefor the phrase "mutual savings and loan".

29. Remove §544.2-1.

30. Amend §577.1-1 by redesignating it as "§544.2-1", and remove new §544.2-1 from Part 577 and insert it in Part 544 immediately after §544.2.

31. Amend Part 544 by adding a new §544.2-2 to read as follows:

§544.2-2 *Preapproved charter amendment.*

This section constitutes approval by the Board of the amendment of section 1 of the Federal mutual savings bank charter to effect the change of the corporate title of a Federal mutual savings bank that has complied with §543.1(b) of this Chapter.

32. Amend §544.3 to read as follows:

§544.3 *Adoption to new Federal charter by a Federal association*

If the board of directors of a Federal mutual association proposes to adopt a charter in the form of any other Federal mutual association charter, the charter may be approved by a majority vote of members present at any duly called regular or special meeting of members. In the case of a Federal stock association the board of directors of which proposes to adopt a charter to read in the form of any other Federal stock association charter, the charter may be approved by the stockholders by a majority of the total votes eligible to be cast at a legal meeting. In either case, after such vote, the association shall submit the following petition to the Principal Supervisory Agent, together with any requested change in the association's title or location of home office, and the Board thereafter will issue the new charter sought, upon approval by the Principal Supervisory Agent or the Board of a change in such name or location:

Federal Home Loan Bank of ____, [City] ____, [State] ____

The undersigned, under §544.3 of the rules and regulations for the Federal Savings and Loan System, petitions the Federal Home Loan Bank Board to issue to it a charter in the form of Charter ____, fixing the name of the undersigned as ____, and its home office at ____. The present charter fixes the name of the association as ____ and its home office location as ____.

The undersigned, by its secretary, hereby certifies that the members or stockholders, at a meeting duly called and held, adopted the following resolution:

Be it resolved, That the present charter of this association be amended to read in the form of Charter ____ as prescribed in the rules and regulations for the Federal Savings and Loan System, prescribing the name of the association as ____ and fixing its home office location as ____.

In witness whereof, the Secretary of the undersigned has hereunto affixed his hand and the seal of the undersigned this ____ day of ____, 19____.

[Name of Federal Association]
By ____
[Corporate Seal]

33. Amend § 544.5, by revising the introductory text, to read as follows:

§ 544.5 *Prescribed form.*

A Federal mutual savings and loan association shall operate under the following bylaws, until such bylaws are amended under the procedure therein prescribed.

* * *

34. Amend § 577.2 by redesignating it as "§ 544.5-1", by removing the term "§577.2" wherever it appears therein and substituting therefor the term "§ 544.5-1", and by inserting new § 544.5-1 in Part 544 immediately after § 544.5.

35. Amend § 544.5-1 by revising the introductory text, to read as follows:

§ 544.5-1 *Prescribed form.*

Unless otherwise authorized by the Board, a Federal mutual savings bank shall operate under the following bylaws until such bylaws are amended under the procedure therein prescribed.

* * *

36. Amend Part 544 by adding a new § 544.8, to read as follows:

§ 544.8 *General.*

(a) References in the Rules and Regulations for the Federal Savings and Loan System to associations with a Charter K (rev.) or Charter N shall be deemed as also referring respectively to associations with the Charter L or Charter N (Rev.), and, other than § 545.4, as also referring to associations with a Charter B or Charter B (Rev.).

(b) The trustees of each Federal mutual savings bank shall be subject to the Rules and Regulations for the Federal Savings and Loan System (Part 541 *et seq.* of this Chapter), the Regulations for the Federal Home Loan Bank System (Part 521 *et seq.* of this Chapter), and the Rules and Regulations for Insurance oif Accounts (Part 561 *et seq.* of this Chapter), insofar as they pertain to directors of Federal associations, just as if they were directors.

37. Amend Part 544 by adding a new § 544.9, to read as follows:

§ 544.9 *Obsolete charter provision for Charter B associations*

The standard proviso in section 10 of Charter B relating to limiting equity, corporate bond and consumer loan investments to a particular percentage of assets is of no force and effect.

38. Amend § 545.25-1 by revising paragraph (a) to read as follows:

§ 545.25-1 *Employment contracts.*

(a) *General.* A Federal savings and loan association with bylaws amended under § 544.6(k), a Federal mutual savings bank or a Charter S or Charter T association, upon specific approval of its board of directors, may enter into employment contracts with its officers and other employees in accordance with § 563.39 of this Chapter.

* * *

PART 546 — MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

39. Amend § 546.1 by revising paragraph (a) to read as follows:

§ 546.1 *Definitions.* As used in §§ 546.2 and 546.3 —

(a) "Association" means a Federal association, or interim Federal association, a national bank, and any building and loan, savings and loan, or homestead association, or cooperative bank, or interim state institution, or commercial or industrial bank organized under the laws of any state which may, under those laws, or other applicable law, merge or consolidate with a Federal association.

* * *

40. Amend § 546.2 by revising paragraph (a) and subparagraph (6) of paragraph (h), to read as follows:

§ 546.2 *Procedure; effective date.*

(a)(1) A Federal association insured by the Federal Savings and Loan Insurance Corporation and one or more other associations so insured may merge as prescribed in this Part if, as to any association which is not a Federal association, the merger is in accordance with the laws of the jurisdiction in which the association was organized.

(2) A Federal association insured by the Federal Deposit Insurance Corporation and any one or more other institutions so insured may merge as prescribed in this Part if, as to any such institution which is not a Federal association, the merger is in accordance with the laws of the jurisdiction in which the association was organized, if applicable, and such other laws as may be applicable.

(3) A Federal association insured by the Federal Deposit Insurance Corporation and any one or more other associations insured by the Federal Savings and Loan Insurance Corporation may merge as prescribed in this Part, subject to the prior approval of the Federal Deposit Insurance Corporation, and if, as to any association which is not a Federal association, the merger is in accordance with the laws of the jurisdiction in which the association was organized.

* * *

(h) * * *

* * *

(5) The association (other than an association that is neither insured by the Federal Savings and Loan Insurance Corporation nor chartered by the Board) which will be the resulting association in the merger has a composite Community Reinvestment Act rating of less than satisfactory, or is otherwise seriously deficient with respect to the Board's nondiscrimination regulations and the deficiencies have not been resolved to the satisfaction of the Principal Supervisory Agent;

* * *

41. Amend §546.2 by removing in paragraph (g) the word "created" and inserting in its place the phrase "created, if applicable, or any other applicable law"; and by inserting in subparagraph (6) of paragraph (h), immediately after the phrase "resulting association's", the first time it appears, the phrase "(other than an association that is neither insured by the Federal Savings and Loan Insurance Corporation nor chartered by the Board)".

42. Remove §546.5, to read as follows:

§546.5 *Conversion from Federal mutual to state-charter mutual.* [Removed eff. ______, 19______.]

PART 547 — APPOINTMENT OF CONSERVATORS AND RECEIVERS

43. Amend §547.3 by adding a second sentence, to read as follows:

§547.3 *Appointment on other grounds.*

* * * In the event a Federal association insured by the Federal Deposit Insurance Corporation has its insured status terminated by the Board of Directors of said Corporation, the Board shall appoint the Federal Deposit Insurance Corporation receiver for that association.

44. Amend §547.6, to read as follows:

§547.6 *Federal Savings and Loan Insurance Corporation or Federal Deposit Insurance Corporation as receiver*

The Board shall appoint only the Federal Savings and Loan Insurance Corporation as receiver for a Federal association which that Corporation insures. The Board shall appoint only the Federal Deposit Insurance Corporation as receiver for a Federal association which that Corporation insures.

PART 549 — POWERS OF RECEIVER AND CONDUCT OF RECEIVERSHIP

45. Amend §549.1 by revising paragraph (b), to read as follows:

§549.1 *Definitions.* * * *

* * *

(b) "Corporation" means the Federal Savings and Loan Insurance Corporation, except when the Federal Deposit Insurance Corporation is receiver, in which case it means the Federal Deposit Insurance Corporation.

46. Amend §549.2 to read as follows:

§549.2 *Procedure upon taking possession.*

The procedure prescribed in §548.1 of this subchapter for a conservator taking possession of a Federal association shall also apply to a receiver except that the notice required by §548.1(c) shall state:

_______ Federal Savings and Loan Association [or Federal Savings Bank] _____, _____, _____, is in the hands of the Federal Savings and Loan Insurance Corporation [or Federal Deposit Insurance Corporation] as receiver appointed by the Federal Home Loan Bank Board.

Federal Savings and Loan Insurance Corporation [or Federal Deposit Insurance Corporation] as Receiver.

By _____
Title _____
Date _____

47. Amend subparagraph (3) of paragraph (b) of §549.3, to read as follows:

§549.3 *Powers and duties of receiver.*

* * *

(b) * * *

* * *

(3) Deposit funds collected in any bank(s) insured by the Federal Deposit Insurance Corporation, in a Bank, or any other depository institutions approved for that purpose by the Board. All depository bank accounts of the receiver shall be carried as follows: "Federal Savings and Loan Insurance Corporation [or Federal Deposit Insurance Corporation], Receiver for _____ Association";

* * *

48. Amend paragraph (a) of §549.5-1 by adding the phrase "or a Federal savings bank" immediately after the word "association" the second time it appears, and amend subparagraph (1) of paragraph (b) of §549.5-1 by adding in the first sentence the phrase "demand accounts," immediately prior to the word "savings" the first time it appears; by adding in the fourth sentence the phrase "demand account," immediately prior to the word "savings" the first time that word appears; and by adding in the fifth sentence the phrase "demand account, holder of a" immediately prior to the word "savings" the first time that word appears.

49. Amend paragraph (c) of §549.5-1 by adding in subparagraph (1) the phrase "demand accounts," immediately prior to the phrase "savings accounts" wherever the latter phrase appears; by adding in subparagraph (2) the phrase "demand accounts," immediately prior to the phrase "savings deposits"; by adding in subparagraph (3) the phrase "demand account," immediately prior to the phrase "savings deposit"; and by adding in subparagraph (4) the phrase "demand accounts," immediately prior to the term "savings deposits."

PART 552 — STOCK ASSOCIATIONS

50. Amend §552.1, by revising the introductory text, redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b), to read as follows:

§552.1 *Definitions.*

All references in this subchapter to the following terms shall, with respect to an association with a charter in the form of Charter S or Charter T, have the meaning defined herein.

* * *

(b) *Charter T association.* The term "Charter T association" means a Federal savings bank which has its charter in the form of a Charter T. References hereafter in this Chapter to Charter S associations or Charter S shall be deemed also as referring respectively to Charter T associations or Charter T.

* * *

51. Amend §552.2-1 by deleting the last sentence and by revising the first sentence to read as follows:

§552.2-1 *Conversion from state stock to Federal stock charter.*

With the approval of the Principal Supervisory Agent, or, in connection with a supervisory transaction, with the approval of the General Counsel, any state stock savings and loan or state stock savings bank type institution may convert to a Federal stock savings and loan association or a Federal stock savings bank, subject to its compliance with the requirements set forth in §§543.8 through 543.11 of this Subchapter governing conversion to a Federal mutual association and its submission of an opinion by independent local counsel within six months from the date of the approval that the conversion is in conformance with applicable state law. * * *

52. Amend paragraph (a) of §552.3 by adding the phrase "or Charter T" immediately after the phrase "Charter S".

53. Amend §552.3 by revising paragraph (b) and adding a new pararaph (c) to read as follows:

§552.3 *Issuance of charter.*

* * *

(b) A Charter S or Charter T in the following form shall be issued to a state stock institution which has converted respectively to a Federal stock savings and loan association or a Federal stock savings bank pursuant to §552.2-1, except that in a case not involving an association that has converted from mutual to stock form, Section 7 of Charter S or Charter T requiring a liquidation account and all references thereto shall be deleted, Sections 8 and 9 shall be redesignated Sections 7 and 8 respectively, and the optional provision contained in §552.4(b) of this Part shall not be available.

(c) Where a Charter T is issued, all references in the following form to "Charter S" shall be changed to "Charter T", all references to "Federal Savings and Loan Association" shall be changed to "Federal Savings Bank" and all references to "association" shall be changed to "bank," and the following sentence shall be added to the end of Section 3: "In addition, the bank may make any investment and engage in any activity as may be specifically authorized by action of the Board or its delegatee in connection with action approving the issuance of the charter."

54. Amend §552.9 to read as follows:

§552.9 *Investments, services and borrowings.*

A Charter S association may: (a) Make any loan or investment authorized by this Subchapter for a Charter N (Rev.)

association; (b) be surety and perform such services as are authorized by this Subchapter for a Charter N (Rev.) association; and (c) borrow, issue obligations, and give security to the same extent authorized by this Subchapter for a Charter N (Rev.) association which has amended its charter under §544.2(f) of this Subchapter. A Charter T association, in addition to the above, may utilize any authority permitted by this Subchapter for Charter T associations.

55. Amend §552.13 by revising subparagraph (1) of paragraph (b), by revising subparagraphs (1) and (2) of paragraph (c), and by revising pararaphs (d) and (e), to read as follows:

§552.13 *Combinations involving Charter S associations.*

* * *

(b) *Definitions.* * * *

(1) *Association.* Any building and loan, savings and loan, or homestead association, or commercial, industrial, cooperative or savings bank organized under Federal or state law, including interim Federal associations and interim state associations.

* * *

(c) *Forms of combination.* * * *

(1) Mergers or bulk purchases of assets in exchange for assumption of liabilities: *Provided*, That (i) all constituent associations have accounts insured by the Federal Savings and Loan Insurance Corporation, except that in combinations involving a Federal association insured by the Federal Deposit Insurance Corporation, all constituent associations have accounts insured either by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation, and (ii) if any constituent is a mutual association, the resulting association shall be mutually held, except in cases involving supervisory mergers, mergers approved under Part 563b of this Subchapter D or mergers in which one of the constituents is an interim Federal association or an interim state institution.

(2) Consolidations among Federal associations resulting in Federal mutual associations.

(d) *Agency approval.* Prior written approval of the Board is required for every combination. In determining whether to confer such approval, the Board shall apply the criteria set out in §571.5 of this Chapter. Prior written approval of the Federal Deposit Insurance Corporation is required for every combination involving a Federal association insured by the Federal Deposit Insurance Corporation and an association not insured by such Corporation.

(e) *Approval of board of directors.* Before filing for Board approval, the combination shall be approved by each constituent association's board of directors: (1) by a two-thirds vote of the entire board of each Federal association, and (2) as required by state law, or other applicable law, for other constituents.

* * *

56. Amend paragraph (1) of §552.13 by removing the period at the end of the third sentence and inserting the following in its place: ", or other applicable law."

SUBCHAPTER D — FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Part 561 — DEFINITIONS

57. Amend §561.1 to read as follows:

§561.1 *Insured institution.*

An "insured institution" is a Federal savings and loan association or Federal savings bank, an interim Federal association, a building and loan, savings and loan, or homestead association, or a cooperative bank, or an interim state institution, whose accounts are insured by the Federal Savings and Loan Insurance Corporation, referred to in this Subchapter as the "Corporation". The Federal Home Loan Bank Board is referred to in this Subchapter as the "Board". Except where otherwise noted, the term "insured institution" shall also be deemed to refer to a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation.

58. Amend §561.2 by revising the first sentence to read as follows:

§561.2 *Insured member.*

The term "insured member" means the holders of an account or accounts in an insured institution, other than a Federal association insured by the Federal Deposit Insurance Corporation. * * *

59. Amend §561.11 by removing the period at the end thereof and adding in its place the following: "or held by insured depositors in a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation."

PART 563 — OPERATIONS

60. Amend §563.7-1 by removing the phrase "savings and loan" the first time it appears.

61. Amend the first sentence of paragraph (a) of §§563.7-4 by removing the phrase "mutual institution" and adding in its place the phrase "insured institution that is in the mutual form".

62. Amend §563.14 by adding the word "insured" immediately before the word "institution" wherever the latter word appears, and by adding the phrase "or other account holders" immediately after the phrase "insured members" wherever the latter phrase occurs.

63. Amend §563.15 by adding a new paragraph (c), to read as follows:

§563.15 *Insurance premiums.*

* * *

(c) *FDIC-insured Federal associations.* As used in this section, the term "insured institution" shall not refer to a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation.

64. Amend §563.16 by adding in the first sentence, immediately after the term "insured institution" the first time it appears, the phrase "(which, for the purposes of this section, shall not include a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation)".

65. Amend §563.22 by adding in the first sentence of paragraph (a) the phrase "(which, for the purposes of this section, shall not include a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation)" immediately after the term "institution" the first time it appears.

66. Amend §563.28 to read as follows:

§563.28 *Advertising of insurance of accounts.*

An insured institution, other than a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation, may advertise itself as a "member" of the Federal Savings and Loan Insurance Corporation.

67. Amend paragraph (a) and subparagraph (1) of paragraph (b) of §563.31, to read as follows:

§563.31 *Other insurance or guaranty.* (a) *General rule.* An insured institution may not acquire any insurance on, or guaranty of, all or any part of its insured accounts in addition to the insurance provided in Title IV of the National Housing Act, other than a Federal association the deposits of

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which are insured by the Federal Deposit Insurance Corporation, and a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation shall not acquire any insurance on, or guaranty of, all or any part of its deposits insured thereby in addition to the insurance provided by the Federal Deposit Insurance Corporation.

(b) *Exceptions.* Paragraph (a) of this section notwithstanding: (1) A Federal association may give bond or security pursuant to §545.24-2 of this Chapter; and

* * *

PART 563(b) — CONVERSIONS FROM MUTUAL TO STOCK FORM

68. Amend subparagraph (4) of paragraph (b) of §563b.3, to read as follows:

§563b.3 *General principles for conversions.*

* * *

(b) *General requirements.** * *

* * *

(4) The converted institution would not have its accounts insured by the Corporation, except in the case of a Federal association insured by the Federal Deposit Insurance Corporation.

* * *

69. Amend clause (xiv) of subparagraph (4) of paragraph (a) of §563b.4 by inserting, immediatley after the word "Corporation", the following: ", or, in the case of a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Federal Deposit Insurance Corporation.

70. Amend paragraph (b) of §563b.4 by revising the heading for the notice to read as follows: "Notice of Filing of an Application for Conversion to Convert to a Stock Savings and Loan Association or a Stock Savings Bank".

71. Amend the first sentence of subparagrpahs (2) and (3) of paragraph (d) of §563b.8, to read as follows:

§563b.8 *Procedural requirements.*

* * *

(d) *Termination or amendment of charter.*

* * *

(2) A mutual association converting to a Federal stock association shall apply to amend its charter and bylaws to read in the form of a charter and bylaws for a Charter S or Charter T association.* * *

(3) The corporate existence of a mutual association converting to a Federal stock association shall not terminate, but the converted association shall be deemed to be a continuation of the entity of the association so converted.

* * *

PART 564 — SETTLEMENT OF INSURANCE

72. Amend Part 564 to add a new §564.11, to read as follows:

§564.11 *FDIC-insured Federal associations.*

Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation are not deemed to be insured institutions for the purposes of this Part.

PART 565 — TERMINATION OF INSURANCE

73. Amend Part 565 to add a new §565.9, to read as follows:

§565.9 *FDIC-Insured Federal associations.*

Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation are not deemed to be insured institutions for the purposes of this Part.

PART 569a — RECEIVERS FOR INSURED INSTITUTIONS OTHER THAN FEDERAL ASSOCIATIONS

74. The heading for Part 569a is amended by removing the phrase SAVINGS AND LOAN".

75. Amend paragraph (a) of §569a.1 by adding the phrase "or Federal savings bank" immediately after the word "association" wherever such word appears.

SUBCHAPTER E — RULES AND REGULATIONS FOR FEDERAL MUTUAL SAVINGS BANKS

76. Remove Subchapter E in its entirety, to read as follows:

SUBCHAPTER E — RULES AND REGULATIONS FOR FEDERAL MUTUAL SAVINGS BANKS [Removed eff. December 15, 1982.]

SUBCHAPTER F — REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 583 — DEFINITIONS

77. Amend §583.5 by adding the phrase "or savings bank" immediately after the phrase "savings and loan".

78. Amend §583.6 by removing the term "savings and loan" the first time it appears, and by removing the period at the end thereof and adding in its place the following: ", and any Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation".

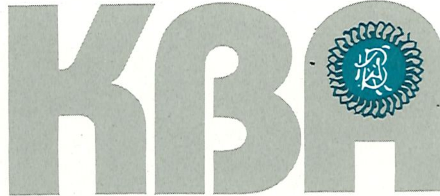
79. Amend §583.7 by removing the period at the end thereof and adding in its place the following: ", but does not mean a Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation.".

PART 584 — REGULATED ACTIVITIES

80. Amend paragraph (e) of §584.1 by adding the phrase "or savings bank" immediately after the phrase "savings and loan" the second time the latter phrase appears.

[Sec. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. §§1462, 1464); Sec. 401, 402, 403, 405, 406, 407, 48 Stat. 1255, 1256, 1257, 1259, 1260, as amended (12 U.S.C. §§1724, 1725, 1726, 1728, 1729, 1730); Sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947; 3 CFR, 1943-1948, Comp., p. 1071]

By the Federal Home Loan Bank Board



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 22, 1983

TO: House Committee on Commercial and Financial Institutions

RE: SB 64

Mr. Chairman and members of the Committee:

The Kansas Bankers Association appreciates the opportunity to appear before the Committee in support of SB 64. This bill makes several changes in the Kansas Banking Code including one to allow conformity with recent changes in federal law and to expand the investment authority of state-chartered banks.

The first amendment is to K.S.A. 9-701 which is the definition section of the Kansas Banking Code and amends subsection (r) concerning the definition of "negotiable order of withdrawal deposits". The amendment incorporates the changes made on October 15, 1982 as a result of the Garn Act which authorized all local units of government to have a NOW account.

The second amendment to SB 64 appears in Section 2 which amends K.S.A. 9-1101. This is the investment section of the Code and outlines the various investment powers for state chartered banks. SB 64 adds two new subsections to this section: New subsection (16) would allow state-chartered banks the same authority which nationally-chartered banks now have to "purchase and sell securities and stock without recourse solely upon the order, and for the accounts, of customers." As the attachment to this memo from the federal law reveals, this is the same wording which the federal statutes use for national banks. This amendment would allow state-chartered banks to purchase and sell stock and securities for the account of customers, but they would not be permitted to underwrite any issue of securities or stock. In purchasing or selling for the account of customers the transactions must be without recourse and solely upon the orders of the customers. The attached letter from KBA General Counsel Charles Henson to KBA Executive Vice President Harold Stones outlines in more detail the types of discount brokerage services which a bank would be able to offer under the provisions of the proposed amendment. Also enclosed are articles concerning the activities of banks in Missouri on discount brokerage and examples of the types of competition that banks are presently facing.

The third amendment to SB 64 also amends the investment section of the Kansas Banking Code to allow state-chartered banks to "subscribe to, acquire, hold and dispose of any class of stock, debentures and capital notes of MABSCO Agricultural Services, Inc. or any similar corporation." As the attachment to this memo shows the MABSCO Agricultural Services Ins. (MASI) would allow Kansas state-chartered banks to invest in the services of the corporation if they held certain amounts of capital notes from this MABSCO subsidiary. The amendment further directs that no bank investment in MASI can exceed 2% of its capital stock, surplus, and undivided profits. The ability to participate in the MABSCO program is of great interest to many Kansas banks--particularly those who specialize in agricultural lending--and would provide a much expanded base for servicing agricultural customers. Obviously no bank is required to participate and any decision to become involved in the MABSCO program is at the discretion of the board of each individual bank.

Attachment 4

HSE C&FI COMMITTEE 3/22/83

...e of Executive Vice President • 707 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444

Section 3 of SB 64 amends K.S.A. 9-1114 to simply clarify language in the Banking Code which was altered last year relating to the stockholders of the bank. Members of the Committee will recall that during the 1982 session HB 3027 was passed which stated that bank directors could hold stock in either the bank or parent corporation (one bank holding company) of the bank. In making those amendments in the 1982 legislation, the references in K.S.A. 9-1114 were inadvertently omitted and this amendment simply brings the language in that section into conformity with other references in the Banking Code.

Section 4 of SB 64 amends K.S.A. 9-1116 to provide greater flexibility for the number of meetings to be held by a bank's board of directors during any given year. Whereas present law requires the meetings to be held in specific months, the proposed amendment to K.S.A. 9-1116 would allow bank directors to hold meetings "during each calendar quarter". Many Kansas banks prefer to hold a board of directors meeting in December and under present law they are unable to do so without calling an extra meeting of the board.

The Kansas Bankers Association thanks the Committee for the opportunity to present these proposed amendments and urges the Committee to recommend SB 64 favorably for passage.

James S. Maag
Director of Research

tory institution, the exemption provided for in section 204.9(a) shall apply in the following order of priorities: (i) first to net transaction accounts that are first authorized by federal law in any state after April 1, 1980, then to other net transaction accounts; (ii) second, to nonpersonal time deposits with the highest reserve ratio under section 204.9(a); (iii) third, to Eurocurrency liabilities; and (iv) fourth, to other nonpersonal time deposits starting with those subject to the second highest reserve ratio under section 204.9(a) and then to succeeding lower reserve ratios.

(2) A depository institution, United States branches and agencies of the same foreign bank, or an Edge or Agreement corporation shall, if possible, assign the reserve requirement exemption of section 204.9(a) to only one office or to a group of offices filing a single aggregated report of deposits. If the reserve requirement exemption cannot be fully utilized by a single office or by a group of offices filing a single report of deposits, the unused portion of the exemption may be assigned to other offices of the same institution until the amount of the exemption or reservable liabilities is exhausted. A depository institution, foreign bank, or Edge or Agreement corporation shall determine this assignment subject to the restriction that if a portion of the exemption is assigned to an office in a particular state, any unused portion must first be assigned to other offices located within the same state and within the same Federal Reserve District, that is, to other offices included on the same aggregated report of deposits. The exemption may be reallocated at the beginning of a calendar year, or, if necessary to avoid underutilization of the exemption, at the beginning of a calendar month.

2. In section 204.9(a), by adding the following sentences at the end thereof:

SECTION 204.9 — RESERVE REQUIREMENT RATIOS

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations and United States branches and agencies of foreign banks:

* * *

(2) *Exemption from reserve requirements.* Each depository institution, Edge or Agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1), nonpersonal time deposits, or Eurocurrency liabilities or any combination thereof not in excess of $2.1 million.

Board of Governors of the Federal Reserve System,

William W. Wiles
Secretary of the Board

FED REG Q AMENDMENT TO LET GOVERNMENTAL UNITS MAINTAIN NOW ACCOUNTS

DRAFT

FEDERAL RESERVE SYSTEM

Regulation Q

[12 CFR Part 217]

[Docket No. R-]

INTEREST ON DEPOSITS

Depositors Eligible to Maintain NOW Accounts

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rules.

SUMMARY: The Board of Governors has amended Regulation Q—Interest on Deposits (12 CFR Part 217) to provide that all government units are eligible to maintain NOW accounts at member banks. This action conforms to Regulation Q with provisions of the Garn-St Germain Depository Institutions Act of 1982 (P. L. 97-320, 96 Stat. 1469).

EFFECTIVE DATE: October 15, 1982.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625), Paul S. Pilecki, Senior Attorney (202/452-3281), or Beverly A. Belcamino, Legal Assistant (202/452-3623), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Consumer Checking Account Equity Act of 1980 (Title III of Pub. L. 96-221) ("Act") authorized depository institutions nationwide, effective December 31, 1980, to permit the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties ("NOW accounts") (12 U.S.C. §1832(a)(1)). Under this statute, NOW accounts were available only to individuals and certain organizations operated primarily for religious, charitable, philanthropic, educational and other similar purposes and not for profit. On September 16, 1981, the Board adopted an interpretation to clarify the rules concerning the class of depositors eligible to maintain NOW accounts (12 CFR §217.157). This interpretation provides that governmental units generally are not permitted to maintain NOW accounts.

Section 706 of the Garn-St Germain Depository Institutions Act of 1982 (P. L. 97-320, 96 Stat. 1469) ("Garn-St Germain Act"), which was enacted on October 15, 1982, provides that "deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof" may be maintained in NOW accounts at member banks. Consequently, the Board is amending its September 16, 1981 interpretation and section 217.1(e)(3) of Regulation Q (12 CFR §217.1(e)(3)) to implement section 706 of the Garn-St Germain Act.

Because this action implements the explicit terms of a statute, which was effective on October 15, 1982, the Board believes that good cause exists for not following the notice and public participation provisions of 5 U.S.C. §553(b) and for making this action effective with the date of enactment of the Garn-St Germain Act.

List of Subjects in 12 CFR Part 217

Advertising; Banks, banking; Federal Reserve System; Foreign banking.

Effective October 15, 1982, pursuant to its authority under section 19(a) of the Federal Reserve Act (12 U.S.C. § 461(a)), the Board amends Regulation Q (12 CFR Part 217) as follows:

1. By revising paragraph (e) of section 217.1 to read as follows:

SECTION 217.1 — DEFINITIONS

* * *

(e) *Savings deposits.* * * *

(3)(i) Deposits subject to negotiable orders of withdrawal may be maintained if such deposits consist of funds in which the entire beneficial interest is held by (A) one or more individuals; (B) corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit; or (C) the United States, any State of the United States, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(ii) Deposits in which any beneficial interest is held by a corporation, partnership, association or other organization that is operated for profit or is not operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes, or that is not a governmental unit described in subparagraph (i)(C) may not be classified as deposits subject to negotiable orders of withdrawal.

* * *

2. By revising section 217.157 to read as follows:

§ 217.157 — Eligibility for NOW Accounts

(a) *Background.* (1) Effective December 31, 1980, the Consumer Checking Account Equity Act of 1980 (Title III of the Depository Institutions Deregulation and Monetary Control Act of 1980; P.L. 96-221; 94 Stat. 146) ("Act") authorizes depository institutions nationwide to offer interest-bearing checking (NOW) accounts to deposits where the "entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit." (12 U.S.C. 1832(a)(2)). The purpose of the Act is to extend the availability of NOW accounts throughout the nation. Previously, as an experiment, NOW accounts were authorized to be offered by depository institutions only in New England, New York, and New Jersey.

(2)(i) The NOW account experiment established by Congress in 1973 did not specify the types of customers that could maintain NOW accounts. As a result, the rules of the Federal Reserve and Federal Deposit Insurance Corporation specified the types of depositors eligible to maintain NOW accounts at member and insured nonmember banks. In enacting the NOW account provision in 1980, Congress adopted virtually the same language concerning NOW account eligibility that previously had been adopted by the Board and the Federal Deposit Insurance Corporation with regard to the types of customers permitted to maintain NOW accounts in institutions located in the NOW account experiment region. (12 CFR 217.1(e)(3) and 12 CFR 329.1(e)(2)). This definition was based upon longstanding regulatory provisions concerning eligibility criteria for savings deposits.

(ii) Effective October 15, 1982, section 706 of the Garn-St Germain Depository Institutions Act of 1982 (P. L. 97-320; 96 Stat. 1469) specifically extended NOW account eligibility to funds deposited by governmental units.

(3) * * *

* * *

(d) *Governmental Units.* Governmental units are generally eligible to maintain NOW accounts at member banks. NOW accounts may consist of funds in which the entire beneficial interest is held by the United States, any State of the United States, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

By order of the Board of Governors

William W. Wiles
Secretary of the Board

DEALING IN SECURITIES

[¶ 49,201] LIMITATIONS AND EXCEPTIONS THERETO

While member banks and national banking associations are permitted to purchase and sell stocks and securities for the account of customers, they may not underwrite any issue of securities or stock. And in purchasing or selling for the account of customers the transactions must be without recourse and solely upon the orders of the customers. The limitation or prohibition imposed upon underwriting does not apply to securities of the United States, general obligations of State governments or political subdivisions thereof, or to obligations issued under the Federal Farm Loan Act. Nor is the prohibition applicable to underwriting obligations of Federal Home Loan Banks. Similarly, no such prohibition is applicable to obligations insured by the Secretary of Housing and Urban Development under section 207 of the National Housing Act if the debentures issued in payment of such insured obligations are guaranteed as to principal and interest by the United States. Also obligations and other instruments issued by the Federal National Mortgage Association or Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Financing Bank, the Student Loan Marketing Association, and those of local public agencies or public housing agencies if the repayment of the obligations of such a public agency is secured by the Secretary of HUD under a lending contract, are exceptions from the general prohibition. A limited exemption from the prohibition is afforded securities of the International Bank for Reconstruction and Development, the Inter-American Development Bank, The Asian Development Bank, and the Tennessee Valley Authority. Securities issued by any of such organizations may be held to the extent that such holding, when added to the amounts of such securities purchased for the bank's own account, do not exceed 10 percent of the unimpaired surplus and 10 percent of the unimpaired paid-in capital stock.

[¶ 49,202]

Law

Sec. 5136 [Revised Statutes] * * * The business of dealing in securities and stock by the [national banking] association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: * * *. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks, or obligations which are insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act or obligations which are insured by the Secretary of Housing and Urban Development (hereafter in this sentence referred to as the "Secretary") pursuant to section 207 of the National Housing Act, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, or mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, or obligations of the Federal Financing Bank, or obligations or other instruments or securities of the Student Loan Marketing Association, or such obligations of any local public agency (as defined

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June 8, 1982

Mr. Harold Stones
Executive Vice President
Kansas Bankers Association
707 Merchants National Bank Bldg.
Topeka, Kansas 66612

Dear Harold:

You have asked for my opinion as to the power and authority of a bank organized under the laws of Kansas to offer discount brokerage services to its customers, as outlined herein.

A discount brokerage service is one part of the Financial Management Account (FMA) currently being developed and marketed to commercial banks by the Fidelity Group and MABSCO Financial Services, Inc. (MABSCO). This brokerage service is an optional feature of the FMA, which a participating bank may choose to offer or not to offer, and which a participating bank's customer may choose to select or not to select. A bank offering the discount brokerage service can vary the extent of services to the customer provided by the bank with the amount of compensation received by the bank from Fidelity increasing as the amount of services provided by the bank increases. The brokerage service can be divided into three "programs." Under program 1, the bank merely receives and executes orders to debit or credit the customer's demand or NOW account when securities are purchased by the customer through Fidelity or when checks received by the bank for the customer, either from sales of securities, dividends, or interest, are deposited into the customer's checking or NOW account which comprises part of the FMA program. The monthly statement and all other communications are strictly between Fidelity and the customer. The bank receives from Fidelity a percentage of the commission charged by Fidelity to the customer.

Under program 2, the customer would communicate to the bank the desired securities transactions; the bank would then, through use of a toll-free telephone number, request on behalf of the customer that Fidelity execute such transaction. Again, debits for securities purchased could come from the customer's NOW or demand deposit account, which is part of the FMA, and receipts

from securities sold, dividends, or interest could be placed into such demand deposit or NOW account. All customer confirmation and monthly billing communications would be made by Fidelity. The bank receives from Fidelity a percentage of the commission charged by Fidelity.

Under program 3, the bank would maintain an on-line communication link with Fidelity, and enter trades requested by bank customers on a terminal, such trades being immediately transmitted to Fidelity for execution. Fidelity would execute the requested transaction, but the bank would perform the customer billing, trade confirmation, and monthly summaries relating to the customer, and would also perform any other aspects of customer relations. Under this option, the bank determines the commission rate, but must pay Fidelity a certain percentage of that commission.

In no event, under any of the three programs, will the bank provide investment advice or perform any discretionary investment function, nor will Fidelity nor any other party have any recourse against the bank.

Under Kansas law, all banks are organized under the general banking law, and are operated by duly organized corporations. (Kansas Constitution, Article 13, Section 1). They have only such powers as are specified in the statutes and those incidental powers necessary to carry into effect the powers expressly granted. Ingersoll v. Bank, 110 Kan. 122, 124 (1921)

In First State Bank v. Bone, 122 Kan. 493 (1927), in determining if a state bank was authorized to invest in a certain type of instrument, the Supreme Court stated:

> "Plaintiff is a banking corporation, engaged, existing, and doing business under and by virtue of our statutes. The statutory designations of the kinds of business it can do are grants of authority, and constitute its express powers. It has implied authority to do all things necessary or proper, incidental to these statutory grants of authority; these constitute its implied powers. But it has no authority to transact business not expressly granted by statute, or implied therefrom. . . . Plaintiff calls attention to the wording of its charter, which includes 'and may do a general banking business.' We need not stop to inquire whether that is a broader term than 'banking corporation' as used in the statute, for a bank organized under and existing under a general banking law finds its powers in the statute rather than in the

> wording of its charter...Our statute outlines the nature of business permitted by a banking corporation, and thereby defines the general banking business of state banks in this state. The wording of plaintiff's charter, in other respects, does not enlarge its authority under the statute.
>
> "Plaintiff has no authority to do business of a kind or character not authorized, either expressly or by implication, by statute." p. 503

There is no Kansas statute that expressly authorizes and empowers a state bank to purchase and sell stocks and securities for the account of customers or to offer brokerage services to its customers. The general powers of state banks are stated at K.S.A. 9-1101 (as amended by H.B. 3027, 1982 session), and they include the power "to exercise..., subject to law, all such powers, including incidental powers, as shall be necessary to carry on the business of banking,..."

The National Bank Act contains a similar provision in defining the powers of national banks. 12 U.S.C., Section 24, provides that a national bank has authority:

> "Seventh. To exercise...all such incidental powers as shall be necessary to carry on the business of banking."

The extent of this authority of national banks has been considered by the federal courts. In Arnold Tours, Inc. v. Camp, 472 F.2d, 427 (1st Cir. 1972), the court construed this grant of authority in determining if a national bank possessed statutory authority to engage in the travel agency business. The court stated:

> "It may be convenient and useful for a national bank to carry on any number of activities. But one of the critical questions here is whether a convenient and useful activity be within the incidental powers of the bank if it is not directly related to what 12 U.S.C. Section 24, Seventh, refers to as 'the business of banking'.
>
> "The most reliable guides as to what is encompassed within the term 'the business of banking' are the express powers of national banks as set out in the National Bank Act. And when one looks at past decisions it becomes apparent that the activities of national banks which have been held to be permissible

> under the 'incidental powers' provision have been those which are directly related to one or another of a national bank's express powers.
>
> "In our opinion, these decisions amply demonstrate that a national bank's activity is authorized as incidental power 'necessary to carry on the business of banking' within the meaning of 12 U.S.C. Section 24, Seventh, if it is convenient or useful in connection with the performance of one of the bank's established activities pursuant to its express powers under the National Bank Act. If this connection between an incidental activity and an express power does not exist, the activity is not authorized an incidental power." pp. 431, 432

In National Retailers Corp. v. Valley Nat. Bank, 604 F.2d 32 (9th Cir. 1979), the court determined that 12 U.S.C. Section 24 (Seventh) did not authorize a national bank to offer electronic data processing services. It followed the Arnold Tours decision in holding that to be within its incidental powers a service offered by a national bank must be convenient or useful to performance of an express power of the bank. See also, Saxon v. Georgia Ass'n. of Independent Ins. Agents, Inc., 399 F.2d 710 (5th Cir. 1968).

These cases establish the rule that the business of banking is defined by the statutory powers of banks. The incidental powers of national banks "necessary to carry on the business of banking" are limited to those convenient or useful in carrying out the express powers given by statute. The rule of these cases defining the powers of national banks thus is consistent with the rule defining the powers of Kansas state banks established in State Bank v. Bone, supra.

Turning to the three programs of brokerage service outlined above, we must examine the express powers of state banks under Kansas law to see if the activity under each of the programs can be said to be convenient or useful to the bank in performing an express power. Under program 1, the activity of the bank would consist merely of carrying out the orders of its customer to debit or credit the customer's account, and the payment or receipt of the customer's funds. This activity would fall within the statutory authority of the bank to receive and pay out deposits, and be authorized by statute. Under program 2, the activity of the bank would be expanded. The bank, on behalf of its customer, would call Fidelity and request it to execute a securities transaction for the bank's customer. As agent, the bank would contact only Fidelity, and the bank would receive from Fidelity a percentage of the commission on the securities

Mr. Harold Stones
June 8, 1982
Page 5.

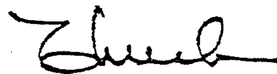
transaction charged by Fidelity. The activity by the bank would not necessarily be in connection with a banking transaction. Under program 3, the activity of the bank would be greatly expanded, with on-line communication between Fidelity and the bank, and all customer billing, trade confirmation, and monthly summaries performed by the bank. The commission for the transaction would be determined and charged by the bank, which would pay Fidelity a percentage of the commission.

In my opinion, it is highly unlikely that the courts of Kansas would find the actions of a state bank under programs 2 and 3 to be within its present statutory authority and powers. As stated above, there is no express authority for state banks to engage in such activity, and I find no express power to which such activity may be said to be incidental.

I call your attention to the fact that national banks have express statutory authority to purchase and sell securities solely upon the order, and for the account of, customers. 12 U.S.C. §24. K.S.A. 1981 Supp. 9-1715(b) authorizes the state bank commissioner, with the prior approval of the state banking board, to authorize state banks to do any act which the banks could do were they operating as national banks at the time such authority is granted, with immaterial exceptions, if the commissioner deems it reasonably required to preserve and protect the welfare of state banks and promote competitive equality of state and national banks. In my opinion, upon being satisfied that the statutory prerequisites exist, the commissioner and board, pursuant to the authority of this statute, could authorize state banks to engage in activities under these programs proposed by MABSCO to the same extent national banks may engage in them under applicable laws and regulations.

I trust that the foregoing will be helpful to you.

Very truly yours,



Charles N. Henson

CNH:aa

"With all of the changes in banking services being considered at the national level, it would be a great injustice to those of us in state chartered banks to be handicapped competitively by state restrictions."

J. V. Lentell, President
Kansas State Bank & Trust
Wichita

"In these days when everyone is entering the banking business, it has seemed very important to us that we take steps to offer as many financially related services to our customers as possible. We have been moving in this direction and have established a trust department which helps us accomplish some of our goals. We are unable to offer discount brokerage services which would simply permit us to buy and sell securities for the customers who know what they want to accomplish. We would not be giving investment advice. The ridiculous part of this situation is that we are the only state bank in town and the two national banks could, if they desired, offer this service while we would be restricted from doind so by state law."

E. A. Morse, President
Citizens Bank & Trust
Abilene

"As a matter of information Kansas banks are in a process of deregulation pertaining to the expense portion of the profit and loss statement, i.e., we are no longer restricted to the amount of interest we may pay and are now able to mark-to-the-market. Your negative vote severly restricts the income portion of the profit and loss statement by saying we have to restrict our entry into financial services provided the Kansas resident. In other words--we can pay all we want but we cannot earn all we need."

James E. Hamman, Executive Vice President
Capital City Bank
Topeka

"The Emporia State Bank and Trust Company is a $56,000,000 bank and wants to be able to offer this service to our customers for some of the following reasons:

(1) We want to be able to compete equally with the local National Bank, Savings and Loan Associations, and Credit Unions.

(2) We want to be able to offer full banking services to our customers.

(3) Why shouldn't the informed investors and consumers be charged 30 to 50% less in commissions?

(4) Banks in adjourning states are offering discount brokerage services now.

(5) We do not want to change our charter to be a National bank to offer this service.

(6) Sears, American Express, Money Market Funds, Brokerage Firms, and Life Insurance Companies all are invading traditional bank services and we need to have discount brokerage service available to our customers if we are to compete with them in offering up-to-date financial services.

Discount brokerage service is available now and the convenience of working with a local bank can be very helpful to the customer. Discount brokerage service is for the sophisticated investor who does his or her own research and decision making. They are not asking for advice to sell or buy; they have already made this decision. We can assist them with the purchase or sale of their securities, and the payment or receipt of their funds. Why shouldn't the astute customers be able to save 30 to 50% brokerage commissions whey then are making their own decisions?"

Howard Gunkel, Executive Vice President
Emporia State Bank and Trust
Emporia

"I am sure you are aware that several commercial banks and savings and loan associations are already offering this service. Because we have had strong indications from many customers that it would be a desirable service in that commissions and/or fees would be reduced significantly from that charged by full-service brokerage firms. These investors can obtain the service from other financial institutions, but not from Kansas state-chartered banks.

Several months ago, we began the necessary research to "tool up" for the service. If it were authorized for us, we would already be doing so. Fee based services that provide public savings and convenience are essential for banks to survive in the new world of deregulation and competition from non-bank financial service providers."

Ben Craig, President & Trust Officer
Metcalf State Bank
Overland Park

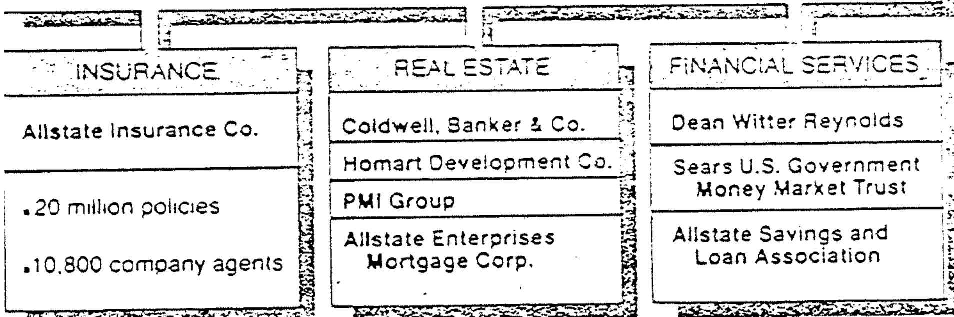
"In Smith Center there is no source of brokerage services offered to the public. Through our trust department we do offer many services to our people. The reduced cost offered by the discount brokerage houses should be available to our people and our bank is very viable source of this service. To permit our competitor across the street, The First National Bank, to offer this service and restrict our bank from doing so is unthinkable.

There is certainly no effort to restrict the Sears Company, American Express Company, or other institutions that are eroding and invading the banking area. Banks must be permitted to compete effectively if we are to retain banks in the small communities."

L. Blaine Rush, Executive Vice President
and Trust Officer
The Smith County State Bank & Trust
Smith Center

"As you are aware, the financial services industry has recently become very competitive due to deregulation as well as competition from non-financial oriented companies, such as Sears. It is vital that the banking industry has the ability to provide a wide range of financial services to serve its customers as well as to compete successfully in the present market environment. I believe that offering discount brokerage services would allow banks to compete more favorably in todays market."

Benjamin F. Zimmerman, III, President
Fidelity State Bank & Trust
Dodge City



Marta Norman, Claire A. Nivola—Newsweek

One-stop shopping: Everything from toasters and real estate to stocks and bonds

Where America Will Bank

Once "Sears was 'Where America shops'," Citicorp observed in a recent pamphlet. "Today, Sears is where America banks." Eventually Sears, Roebuck and Co. may be where America does almost everything. Last week, in a mammoth shopping trip of its own, the world's No. 1 retailing behemoth announced that it would buy the nation's largest real-estate broker, Coldwell, Banker & Co., and the fifth largest securities firm, Dean Witter Reynolds, in transactions worth a total of about $800 million. The bids hastened the company's transformation into a financial giant that "will bring a new dimension of service to the 36 million families who are regular Sears customers," Sears chairman Edward Telling declared. "We can together achieve our goal of becoming the premier provider of financial services in the country."

It is a goal Sears has held for some time—and last week's moves toward its culmination foretold further shake-ups in an industry in revolution. This year alone the nation's largest charge-card, insurance, private-construction and commodities-trading companies have bought controlling stakes in major securities firms—creating new titans like Shearson/American Express, the Bache Group unit of Prudential Insurance, the Bechtel-backed Dillon Read and Phibro Corp.'s Salomon Brothers subsidiary. The giants aim to tap new markets with a broad array of services—and Sears will give them fierce competition. In the future, Sears customers will be able to buy a house, get a mortgage, furnish the house, insure it and their own lives, invest idle funds in a high-yield, low-risk money-market fund and speculate in securities—the ultimate in one-stop shopping.

Sears's new thrust into financial services is hardly a surprise. Through its Allstate subsidiary, launched in 1931, it already had a foothold in insurance, and over the years, it has acquired a number of savings and loan institutions. It has long planned to issue its own short-term debt. And just last month it announced that it would set up a money-market fund, which will invest in Treasury bills, notes and other U.S. Government instruments with less than one-year maturities, pending Securities and Exchange Commission approval. When it negotiated a $2 billion credit agreement with a consortium of banks in September, analysts assumed that the company was on the brink of making an offer for a financial-services firm.

Stock Boy: The man who made the transformation possible is Edward Telling. Sears's chief, who joined the company as a stock boy in 1946, rose through the ranks of middle management. Although his appointment as chairman in 1978 came as something of a surprise, his long years of experience at the retail level came in handy. Telling was convinced, for instance, that the company's attempt during the early 1970s to develop an upscale, high-fashion market was a serious mistake, and he moved quickly to restore Sears's image as Middle America's shopping mall.

Telling also trimmed a bloated layer of middle management, inducing nearly 1,500 employees to take early retirement and improving productivity. Though the retailing arm isn't entirely out of the woods, analysts expect business to revive with the economy and say the streamlined Sears is fully capable of digesting its new lines of business. "If you were talking about the old Sears, it would've been a heckuva mouthful," says analyst John Landschulz of Chicago's M[illegible] & Co. "But you're talking about new management, and I think they can handle it."

Sears will group its latest acquisitions in its growing real estate and financial services divisions (diagram). Dean Witter itself will be run as an independent subsidiary with access to the massive $15 billion capital resources of its new parent. Its Sears connection should help its drive to add more investment banking, underwriting and institutional clients to its longstanding retail accounts. Even more important, Witter could gain millions of new well-heeled customers. Of the holders of Sears's 24 million active credit-card accounts, fewer than 9 percent currently have brokerage accounts—yet they are estimated to hold two-thirds of the passbook-savings dollars in the country. "Before you know it, we'll be selling securities through the Sears catalogue," mused one Dean Witter broker last week.

The new Sears will pose a stiff challenge to competitors. With Coldwell, Banker, for instance, it will compete head-on with Merrill Lynch, which has sunk millions of dollars into a so far unprofitable attempt to set up a nationwide residential real-estate firm. Sears thinks its own credit services will be much more appealing to middle-income customers than those offered by the mighty new Shearson/American Express. The expanded Sears will make the remaining independent brokers more vulnerable than ever to takeover. E.F. Hutton is widely expected to become an acquisition target soon—perhaps to shareholder Transamerica Corp.—and smaller regional brokers may ultimately find it necessary to merge in order to survive.

Joining the Fun: But the biggest shock waves may be felt outside the brokerage business. Since Sears will engage in both banking and brokerage—and three out of every four adults shop at Sears at least once a year—it will pose an enormous threat to the nation's banks, which are currently barred by law from participating in most securities business. They seem certain to object loudly to Sears's new powers—and to bring new pressure on Congress to amend the Federal banking laws that set the distinctions between the services banks and brokers can provide. According to Citicorp chairman Walter Wriston, the Sears bids prove that "the marketplace is simply breaking down government policy. We certainly don't want to see Sears controlled—just let us join the fun."

It is unlikely that the legal obstacles to the banks would be toppled anytime soon—and that could give Sears a substantial head start in its new lines of business. Even without the jump, Sears may have an unbeatable competitive advantage: a comforting reputation for stability and old-fashioned quality that could prove as tempting to prospective investors as Mom's fresh-baked apple pie. "People trust Sears," says money-market analyst William Donoghue. When it comes to investing in the future, the company that grew up with America may seem to its new customers to be a better-than-even bet.

STAR BUSINESS

Sunday, February 13, 1983

More area banks offering brokerage services

By Steve Rosen
Star business & financial writer

Discount brokerage firms—those no frills alternatives to full-service investment firms—are on the march at Kansas City area commercial banks.

United Missouri Bancshares Inc., the Kansas City bank holding company, is offering discount brokerage services to its customers statewide. In addition, St. Louis-based Mark Twain Bancshares Inc., which has four affiliates in the Kansas City area, began its discount brokerage service earlier this month. Joining them on March 15 will be Commerce Bancshares Inc., based in Kansas City.

First National Bank of Kansas City, Mercantile Bank & Trust Co. of Kansas City and Home State Bank of Kansas City, Kan., are busy looking into the discount brokerage business.

Thus, Kansas City area banks are part of a trend in which banks and savings and loan associations are entering the stock brokerage business. This represents a further blurring of the traditional financial services lines between banks and brokerage firms that have been in place since since the Glass-Steagall Act of 1933, which bars commercial banks from many investment banking activities.

Bankers received a boost last month in their efforts to invade brokerage industry territory when the Federal Reserve Board approved Bank America Corp.'s acquisition of Charles Schwab & Co., one of the nation's largest discount brokerage companies.

The basic appeal of the discount brokerage program is the low price on buy and sell orders, something bankers hope astute investors will find hard to ignore when they know what they want to do and merely need to execute a trade. The investor who uses the bank-broker service pays only for the execution of the transaction—unaccompanied by investment advice or research analysis.

United Missouri Bancshares, the first Kansas City banking organization to enter the discount brokerage field, is pleased with the early customer response to its program. "This product has been well accepted throughout our trade territory," said Frank Terry, a vice chairman of the board of United Missouri Bank, the lead bank of the holding company.

United Missouri, which began its program late last year, is offering its service in conjunction with Federated Securities, an investment company in Pittsburgh, Pa. United Missouri does not offer any investment advice with its service and does not directly handle trades for its customers. The trades are routed through Federated, which executes the buy and sell orders.

Mr. Terry said the discount brokerage business "is not a major profit item," but he believes the service will help the bank attract and retain customers and cross-sell products to them.

Mercantile Bank & Trust Co. intends to introduce its discount brokerage program in Kansas City in the first half of 1983, said Jim Lanning, a senior vice president of Mercantile Bancorporation. The Mercantile program, called the Discount Plus account, is currently being offered to St. Louis customers of Mercantile Trust Co., the lead bank of the holding company.

See Banks, pg. 2G, col. 1

To open an account, a customer must deposit $25,000 in a combination of cash, certificates of deposit or marketable securities.

Mr. Lanning said he believes such brokerage services "are not the type of services that will be attractive in every market. I doubt it will have much appeal in some smaller towns, but I believe that in the Kansas City, Springfield and St. Louis markets, it would go over very well."

First National Bank of Kansas City also plans to open a discount operation in the first half of this year, said Jim Stewart, a First National executive vice president.

Home State Bank hasn't decided whether to offer such a service yet, but Bob Higney, a vice president of marketing, said there is a question whether "our customers would indeed forsake the traditional investment firms and use our bank."

Not every bank is jumping at the chance to offer a discount brokerage service.

Boatmen's Bank & Trust Co. of Kansas City and Centerre Bank of Kansas City have no such plans to set up discount brokerage programs, executives from both banks said.

"I see lots of problems with it," said C. Ted McCarter, president and chief executive officer at Boatmen's. "I think we're going to get the cats and the dogs of the brokerage business (and) I don't see how it will be that profitable."

Gil Bourk, president of Centerre Bank, said he believes his bank's investment department is already providing many of the same services that a discount brokerage operation would offer. "My feeling is that we have every tool except a seat on the exchange," Mr. Bourk said.

Although Mr. Bourk said competitive factors might eventually force Centerre to follow other financial institutions into the discount brokerage program, "we don't perceive it as being a necessity at this point."

Still, if the boom in banks entering the discount brokerage business continues, does it represent a threat to full-service investment firms?

"It might hurt some, but not enough to make more than a ripple," said Elliott Hollub, senior vice president at B.C. Christopher Securities Co. in Kansas City. At his own firm, he added, "the number of clients we have that call their own shots is very small."

Fidelity Brokerage Services Inc., the Boston investment firm that is providing discount brokerage service to 160 banks around the country—including Commerce Bancshares Inc.—believes its bank program "will help us more than it hurts," a spokesman said.

Discounters now control about 12 percent of the retail brokerage market nationally, the spokesman said, and "we feel this market is so untapped that our affiliation with banks will only help our own retail effort. Investors will learn more about discount firms and many of them will decide that rather than going through a bank, they will go directly to us."

QUESTIONS AND ANSWERS

Where will MABSCO Agricultural Services, Inc. (MASI) get its money? MASI will have a working agreement with Rabobank Nederland (a Dutch Bank) to purchase the participations.

Who will the participating banks deal with? All of your contact will be with MASI, who will have the authority to approve and consummate the transactions on Rabobank's behalf. MASI will approve the credit and collateral criteria, purchase the participations, maintain document control, and perform any necessary accounting and related functions.

How may your bank participate in the program? You will be required to make an investment in MASI depending upon the deposit base of your bank. This investment will be made by purchasing a Demand Capital Note from MASI for a minimum amount of $3,000.00 to a maximum of $12,750.00 depending upon your bank footings.

Will City banks and Correspondent banks be eligible to use this service? Yes. The service will be available to any bank. Correspondent banks will be required to invest an additional $1,000.00 for each originating bank for which it processes loans to MASI.

Will MASI buy entire loans from participating banks? No. The originating bank must retain a minimum of 20% of the loan. Rabobank will not purchase more than 80% of the credit. The portion of the credit retained by the originating bank will be on a first in-last out basis.

How will the interest rate be determined? Rabobank will formulate rates good for loan terms of 30 days, 6 months and 1 year. These rates will be based upon term Fed Funds. Rabobank will add 125 basis points and will publish these rates to MASI daily.

May the originating banks charge more than the Rabobank rate? Yes, you may charge your customary bank rate on the entire loan. You will earn an increase in yield, on the portion retained, of 400 basis points for each 100 basis points that you mark-up the quoted Rabobank rate.

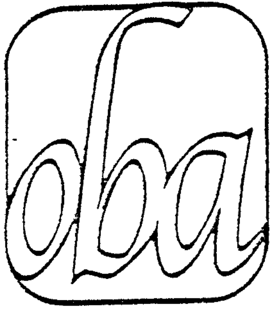
How will MASI get paid? MASI will receive a service fee from Rabobank of 25 basis points.

Will we be able to make term loans of longer than 1 year? Certain livestock and equipment loans may be made for terms up to 5 years. These loans will require a variable annual interest rate.

Will Agri-business loans be eligible? Yes, but they may require specific approval of Rabobank.

How soon will this program be available? MASI must complete its organization, working agreement with Rabobank, qualifications with State and Federal regulatory agencies, and develop all of the necessary operating procedures. We hope to develop a pilot program during late summer of 1982 and be fully operational by November 1, 1982.

Where may I obtain additional information? You may write or call: Jim C. Potter, Executive Vice President, 430 Liberty Building, Des Moines, Iowa 50308, Telephone (515) 286-4376.



OKLAHOMA BANKERS ASSOCIATION

TO: KBA Gov. Council
Ag. Lending Comm.
From: Harold Stones —
For your early information —
H.S.

News Release

Contact: Bob Harris, 405/424-5252

Date: 4-9-82

For Release: Immediately

Attention: Business Editor

MABSCO BANKERS SERVICE, INC.
FORMS AGRICULTURAL CREDIT CORPORATION

OKLAHOMA CITY--The Board of Directors of MABSCO Bankers Service, Inc., a consortium of 13 midwestern state bankers associations, has announced the election of officers for 1982-83 and the formation of an agricultural credit corporation.

MABSCO's new chairman is Bill Crawford, president of First National Bank and Trust of Frederick, Okla., and president of the Oklahoma Bankers Association. The new vice chairman is Frank Moore, president of the Commercial and Savings Bank of St. Clair County, St. Clair, Mich., and immediate past president of the Michigan Bankers Association.

Meeting in Chicago April 2, the MABSCO Bankers Services Board approved formation of an agricultural credit corporation to be incorporated as MABSCO Agricultural Services, Inc. It will operate as a wholly owned subsidiary of MABSCO Bankers Service, Inc.

(more)

MABSCO Agricultural Services becomes the second wholly owned subsidiary of the parent holding company. MABSCO Financial Services, Inc., was formed three months ago to provide banks in the 13-state area access to a financial management package which includes a money market mutual fund which provides rates competitive with those paid by non-bank competitors.

MABSCO Agricultural Services, Inc., will assist local banks in the 13-state area in making loans to finance agricultural interests. Bank holding companies and larger correspondent banks will also be eligible for assistance and are expected to take advantage of the new service.

The newly formed agricultural credit corporation has reached agreement with Rabobank (Netherlands) to provide funds for the program, which is expected to be fully operational by Nov. 1, 1982. Officials predict rates on these funds to be extremely competitive and in most cases well below prime rate.

Rabobank will furnish MABSCO Agricultural Services a 30-day rate, a two months-to-six months rate, and a one-year rate. Term loans of up to five years, with a variable rate of interest, will also be available to participating banks.

Originating banks will make loans to farmers while retaining a 20 percent interest on a first in, last out basis and sell an 80 percent participation to Rabobank.

(more)

MABSCO Agricultural Services will act as Rabobank's agent in the transaction and will receive a service fee from Rabobank. MABSCO will establish loan requirements, maintain documentation, perform accounting functions, and package smaller loans into blocks acceptable to Rabobank.

The program is designed primarily for production agricultural loans, but agri-business loans will also be made in some instances.

MABSCO Agricultural Services President Ed Tubbs, also chairman of the Maquoketa State Bank of Maquoketa, Iowa, says, "Originating banks will have the benefit of a new source of funds without a compensating balance requirement."

Specific details of the program with Rabobank are still being worked out, but a pilot program is expected to be initiated by mid-summer and a fulltime staff person will be hired in the near future.

"The explosion in the demand for ag credit prompted us to look for an alternative to the high cost of funds and a way to import capital into the midwest, and we think we've found it," says Tubbs.

The 13 state bankers associations which own MABSCO Bankers Services are Arkansas, Colorado, Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota and Wisconsin. Those state associations have combined memberships of over 6,700 commercial banks.

(15) to subscribe to, acquire, hold and dispose of stock of any class of the KBA mortgage corporation, a corporation having as its purpose the acquisition, holding and disposition of loans secured by real estate mortgages, and to acquire, hold and dispose of the debentures and capital notes of such corporation. No bank's investment in such stock, debentures and capital notes shall exceed 2% of its capital stock, surplus and undivided profits and such investment shall be carried on the books of the bank as directed by the commissioner.

Sec. 2. K.S.A. 1981 Supp. 9-1117 is hereby amended to read as follows: 9-1117. No person shall be a member of the board of directors or a president within the meaning of K.S.A. ~~1979~~ *1981* Supp. 9-1114 and K.S.A. 9-1115, of any bank unless such person is the owner of record of common stock, having a par value of not less than ~~five hundred dollars ($500)~~ *$500*, in such bank *or in the parent corporation of such bank*. Such stock may be transferred to and held in a trust if such trust is revocable by the member or president owning such stock, but the stock shall not be pledged, hypothecated or assigned in any other way.

Sec. 3. K.S.A. 1981 Supp. 9-1118 is hereby amended to read as follows: 9-1118. Each director shall take and subscribe an oath that ~~he or she~~ *such director* will administer the affairs of such bank diligently and honestly and that ~~he or she~~ *such director* will not knowingly or willfully permit any of the laws relating to banks to be violated, and each director and the president of a bank shall swear that ~~he or she~~ *such director or president* is the owner in good faith of shares of common stock having a par value of at least ~~five hundred dollars ($500)~~ *$500* of such bank *or in the parent corporation of such bank* standing in ~~his or her~~ *such director's or president's* name and that the same has not been pledged or assigned, except as authorized by K.S.A. ~~1979~~ *1981* Supp. 9-1117, and amendments thereto. A copy of such oath shall be filed with the commissioner.

Sec. 4. K.S.A. 9-1101 and K.S.A. 1981 Supp. 9-1117 and 9-1118 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 12, 1982.

Published in the *Kansas Register* April 15, 1982.