Approved February 9, 1983
Date

MINUTES OF THE Senate COMMITTEE ON Commercial and Financial Institutions.

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~p.m.~~ on February 8, 19 83 in room 529-S of the Capitol.

All members were present except:

Sen. Reilly - Excused

Committee staff present:

Bill Wolff, Legislative Research
Bruce Kinzie, Revisor's Office

Conferees appearing before the committee:

Jim Maag, Kansas Bankers Association

The minutes of February 3 were approved.

The hearing on SB 64 began with Jim Maag, Kansas Bankers Association, giving his testimony in support of the bill which 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. (See Attachment I). Mr. Maag went through each of the four proposed amendments with the committee and answered questions regarding the amendments.

The chairman had a question as to the effect of the first amendment. Mr. Maag answered by explaining that this allows a public unit to have a NOW account or a Super NOW. There were some questions about the second amendment as to if it would allow banks to charge a fee for discount brokerage services which they would be able to offer under the provisions of the proposed amendment. Staff explained that this is a service that is allowed to banks without having to have a brokerage license. Mr. Maag stated that the banks would just act as an intermediary between the broker and its customers. He added that the types of services that state-chartered banks can offer have to be extended in order to compete with federally-chartered banks. Mr. Maag also answered questions regarding agricultural loans which is delt with in the third proposed amendment. Also, the essence of lines 298 and 299 was explained as being the revisor's clean up of awkward language. The hearing on SB 64 was concluded.

There being some extra time, committee discussion followed on SB 64 as to how it conforms to the Garn-St. Germain Act. The chairman stated that SB 64 would allow state-chartered banks to compete with the federally-chartered banks.

Sen. Pomeroy made a motion that SB 64 be amended as suggested. Sen. Werts seconded the motion. After some discussion as to what the real purpose of the Garn Act is, the motion carried.

Senator Gordon expressed his concern over the effect of the Garn Act. He asked if all banks in Kansas will use this bill or will it be limited to certain areas. The chairman answered that it is difficult to say at this time--it depends on the competition. He added that if the bill is rejected, some state banks may convert to federally-chartered to be able to do what they want. Mr. Maag stated that the only thing relating to the Garn Act in this bill is the NOW account, but he was in agreement with committee members that the Garn Act does create concerns.

The next meeting will be held on February 9.

The meeting was adjourned.

SENATE COMMITTEE

ON

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS
(Please print)

| DATE | NAME | ADDRESS | REPRESENTING |
|---|---|---|---|
| 2-8-83 | John Montgomery | Topeka | Ks. Advis. Comm. on Mex. Amer. Affairs |
| " | [illegible] | " | KCBA |
| " | Tom Wilson | " | KSLL |
| " | Jim Turner | Topeka | KSCC |
| / | Jim Holt | Valley Center | KCUL |

# SENATE
# COMMITTEE ON
# COMMERCIAL AND FINANCIAL
# INSTITUTIONS

## TESTIMONY ON SB 64

## BY
## KANSAS BANKERS ASSOCIATION

## FEBRUARY 8, 1983

Attachment I

February 8, 1983

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

TO: Senate 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". It is necessary to suggest to the Committee an amendment to this section due to the fact that the Federal Deposit Insurance Corporation did not update its regulatory definition of NOW accounts until after the bill was originally drawn. The suggested amendment to the Committee 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 account, 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.

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

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

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 MBASCO program is at the discretion of the board of each individual bank.

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

Amend S.B. 64 as follows:

On Page 3, in line 114, by inserting the word "solely" after the word "consists"; in line 115, by striking the word "or" and inserting a comma in lieu thereof, and by striking all after the word "by"; in line 116, by striking the word "other" and inserting in lieu thereof the word "an"; in line 118 by striking all after the comma; by striking all of line 119 and line 120 before the period and inserting in lieu thereof "or with respect to 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.

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 or 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

EIDSON, LEWIS, PORTER & HAYNES

LAWYERS

1300 MERCHANTS NATIONAL BANK BUILDING

EIGHTH AND JACKSON STREETS

TOPEKA, KANSAS 66612

913-233-2332

OF COUNSEL:
O. S. EIDSON

PHILIP H. LEWIS
JAMES W. PORTER
WILLIAM G. HAYNES
CHARLES N. HENSON
AUSTIN NOTHERN
BROCK R. SNYDER
CHARLES O. MCATEE
DALE L. SOMERS
K. GARY SEBELIUS
RICHARD F. HAYSE
RONALD W. FAIRCHILD
JOHN H. WACHTER
LARRY J. MUNDY
ANNE L. BAKER
JAMES P. RANKIN

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

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

# 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 —
HS.

# 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.