

**STATE OF KANSAS**

**OFFICE OF THE STATE BANK COMMISSIONER**

**SUPPLEMENT TO INTERAGENCY BANK MERGER ACT APPLICATION**

In addition to information in the Interagency Bank Merger Act Application, the following should be submitted.

- 1) In accordance with K.A.R. 17-22-1, a \$1,000 nonrefundable fee must be remitted when the application is filed.
- 2) A copy of the agreement between the participating institutions, together with related documents.
- 3) A certified excerpt from the meetings of both boards of directors setting forth the Resolution adopting the proposed transaction.
- 4) A certification that a majority of the stockholders of record of each institution voted in favor of the merger transaction is to be provided pursuant to K.S.A. 9-1724.
- 5) Affidavit of Publication that notice of the proposed merger was made; see attached sample notice.
- 6) Attach a certificate by counsel in substantially the following form: "I hereby certify that I have examined the agreement between the participating institutions dated \_\_\_\_\_, and related documents. In my opinion the agreement is legally sufficient and all applicable laws and regulations have been complied with in connection with its adoption."
- 7) If the Resultant Bank is to be owned by a bank holding company, indicate the total amount of deposits of all Kansas banks in which the holding company has the power to vote 5% or more voting shares (either directly or indirectly) including the proposed Resultant Bank deposits.
- 8) If the Applicant/Resultant Bank's title will change as a result of the proposed merger transaction, a letter requesting such change containing a certification that such new title is not the same as any other financial institution in the same city or town and is not a registered name, is to be submitted to the State Banking Board. A Resolution from the Board of Directors of the Applicant approving the submission of such letter will need to accompany any letter of request.
- 9) If the Applicant does not have trust powers and is acquiring an institution with trust powers, a separate application will need to be submitted to both the State Bank Commissioner and the Federal Deposit Insurance Corporation for authority to exercise trust powers, if desired. If trust powers are not desired and the other institution has trust accounts, detail how such trust accounts will be disposed.
- 10) The applicant may provide information in addition to that requested which, in the applicant's opinion could aid in the analysis and disposition of the proposal.

The Kansas Open Records Act (K.S.A. 45-215 et seq.) exempts from public disclosure "records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of Kansas supreme court..." The State Bank Commissioner has determined that all information exempt under the Freedom of Information Act (5 U.S.C. 552) is also exempt from disclosure under the Kansas Open Records Act.

It is the responsibility of the applicant to identify clearly, and on separate pages, the information submitted with the proposal which it deems confidential. However, the determination of the question of confidentiality and the discretion to release information which is exempt resides with the State Bank Commissioner, consequently, the specific information you indicate to be confidential may be made available for public review after consideration.

Notice of the proposed merger must be published in a newspaper of general circulation in the community or communities in which the main office of each of the banks or institutions involved in the transaction are located, or if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. In cases of branch purchase and assumptions, the notice must also be published in a newspaper(s) in the community or communities where the branch office(s) to be purchased is/are located. An Affidavit of Publication must be supplied to the State Bank Commissioner.

TIME FRAME FOR PUBLICATION

Notice of the merger, consolidation or transfer shall be published at least once each week for three consecutive weeks before the merger.

NOTICE OF PROPOSED \_\_\_\_\_  
(Use Appropriate Term: Bank Merger, Bank Consolidation, Acquisition of Bank Assets and Assumption of Liabilities)

Notice is hereby given that the \_\_\_\_\_  
(Name of Applicant Bank) (City and State)

has made application to the State Bank Commissioner, Topeka, Kansas, for written consent to

\_\_\_\_\_ (merge with, consolidate with, acquire the assets of, assume liability to pay deposits made in)

the \_\_\_\_\_  
(Name of Bank or Banks) (City and State)

If it is contemplated that the continuing bank will operate the offices of the other depository institutions as branches, the following statement shall be added to the notice:

It is contemplated that all of the offices of the above named institutions will continue to be operated, with the exception of

\_\_\_\_\_ (identity and location of each office which will not be operated).

This notice is published pursuant to Kansas Statutes Annotated 9-1724.

Any person wishing to comment on this application may file his or her comments in writing with the State Bank Commissioner located at 700 Jackson, Suite 300, Topeka, Kansas, 66603-3796 before processing of the application has been completed. Processing will be completed no earlier than 21 days following the first required publication for the State Bank Commissioner. The period may be extended by the State Bank Commissioner for good cause. The nonconfidential portion of the application file is available for inspection within three business days following the request for such file. The file may be inspected in the Office of the State Bank Commissioner during regular business hours. Photocopies of information in the nonconfidential portion of the application file will be made available upon request. A schedule of charges for such copies can be obtained from the State Bank Commissioner.

Date: \_\_\_\_\_ (Name of Bank)

\_\_\_\_\_ (Location)

\_\_\_\_\_ (Name of Bank)

\_\_\_\_\_ (Location)

**9-1724. Merger, consolidation or transfer of assets and liabilities; information to be filed with commissioner; investigation; fees.** (a) Before any bank can merge, consolidate with or transfer its assets and liabilities under the provisions of article 67 or article 68 of chapter 17 of the Kansas Statutes Annotated, the bank concerned in such merger, consolidation or transfer shall file, or cause to be filed, with the state banking commissioner, certified copies of all proceedings had by its directors and stockholders relating to such merger, consolidation or transfer. The stockholders' proceedings shall show that a majority of the outstanding voting stock was voted in favor of the merger, consolidation or transfer. The stockholders' proceedings shall also contain a complete copy of the agreement made and entered into by the bank, with reference to such merger, consolidation or transfer. The provisions of this act shall not apply to the merger, consolidation or transfer of assets and liabilities of a bank when the surviving entity is a national banking association or other federally chartered financial institution, except that the bank shall provide written notification to the state bank commissioner of such merger, consolidation or transfer of assets and liabilities at least 10 days prior to its consummation. In addition, not more than 15 days following such a merger, consolidation or transfer of assets and liabilities, the bank shall surrender its state certificate of authority or charter and shall certify in writing that the proper instruments as required by the Kansas general corporation code have been filed in accordance with K.S.A. 17-6003, and amendments thereto.

Upon the filing of the stockholders and directors' proceedings, the commissioner shall make an investigation of each party to the merger, consolidation or transfer to determine whether:

- (1) The interests of the depositors, creditors and stockholders of the bank are protected;
- (2) the merger, consolidation or transfer is in the public interest; and
- (3) the merger, consolidation or transfer is made for legitimate purposes.

The commissioner's consent to or rejection of such merger, consolidation or transfer shall be based upon such investigation. No merger, consolidation or transfer shall be made without the consent of the commissioner. At the time of filing the request for merger, consolidation or transfer, a fee shall be paid to the commissioner in an amount established by rules and regulations adopted by the commissioner.

Notice of the merger, consolidation or transfer shall be published at least once each week for three consecutive weeks before or after the merger, consolidation or transfer is to become effective, at the discretion of the commissioner, in a newspaper of general circulation published in each city or county in which the bank is located and a certified copy of the notice shall be filed with the commissioner.

(b) As used in this section, "bank" means a state bank or trust company incorporated under the laws of Kansas. (L. 1995, ch. 19, § 2; July 1.)

**\*See Special Orders: 1992-1; 1995-5, 1997-2.**

## Article 67.-MERGER OR CONSOLIDATION

### 17-6701. Merger or consolidation of domestic corporations.

(a) Any two or more corporations existing under the laws of this state and authorized to issue capital stock may merge into a single corporation, which may be any one of the constituent corporations or they may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) The board of directors of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation; (4) in the case of consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement; (5) the manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights or securities of any other corporation which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of the certificates evidencing certificated shares, which cash, property, rights or securities of any other corporation may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and (6) such other details or provisions as are deemed desirable, including, without limiting, the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of K.S.A. 17-6405, and amendments thereto. The agreement so adopted shall be executed in accordance with K.S.A. 17-6003, and amendments thereto. Any terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

(c) The agreement required by subsection (b) shall be submitted to the stockholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock of the corporation, whether voting or nonvoting, at the stockholder's address as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. At the meeting the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be executed, acknowledged and filed, and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with K.S.A. 17-6003, and amendments thereto, which states: (1) The name and state of incorporation of each of the constituent corporations; (2) that an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with this section; (3) the name of the surviving or resulting corporation; (4) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger or, if no such changes or amendments are desired, a statement that the articles of incorporation of one of the surviving corporations shall be the articles of incorporation; (5) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate; (6) that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving or resulting corporation, stating the address thereof; and (7) that a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent corporation.

(d) Any agreement of merger or consolidation may contain a provision that at any time prior to the filing of the agreement or certificate in lieu thereof with the secretary of state, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the stockholders of all or any of the constituent corporations. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the secretary of state, except that an amendment made subsequent to the adoption of the agreement by the stockholders of any constituent corporation shall not: (1) Alter or change the amount or kind of shares, securities, cash, property or rights, or any of the proceedings, in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation; (2) alter or change any term of the articles of incorporation of the surviving or resulting corporation to be effected by the merger or consolidation; or (3) alter or change any of the terms and conditions of the agreement if such alteration or change would adversely affect the holders of any class or series thereof of such constituent corporation.

(e) In the case of a merger, the articles of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the articles of incorporation are set forth in the agreement of merger.

(f) Notwithstanding the requirements of subsection (c), unless required by its articles of incorporation, no vote of stockholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if: (1) The agreement of merger does not amend in any respect the articles of incorporation of such constituent corporation; (2) each share of stock of such constituent corporation outstanding immediately prior to the effective date of the merger is to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and (3) either no shares of common stock of the surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such plan do not exceed 20% of the shares of common stock of such constituent corporation outstanding immediately prior to the effective date of the merger. No vote of stockholders of a constituent corporation shall be necessary to authorize a merger or consolidation if no shares of the stock of such corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation. If an agreement of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its stockholders pursuant to this subsection, the secretary or assistant secretary of that corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and: (1) If it has been adopted pursuant to the first sentence of this subsection, that the conditions specified in that sentence have been satisfied, or (2) if it has been adopted pursuant to the second sentence of this subsection, that no shares of stock of such corporation were issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation. The agreement so adopted and certified shall then be executed, acknowledged and filed, and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto. Such filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to such filing. (L. 1998, ch. 189, § 13; July 1.)\* **See Special Order 1995-5.**