

## ISSUANCE OF CAPITAL NOTES OR DEBENTURES

K.S.A. 9-1101a governs the issuance of preferred stock and states the following:

"In accordance with normal business considerations and upon approval of stockholders owning two-thirds of the voting stock of the bank, the bank may issue convertible or nonconvertible capital notes or debentures in such amounts and under such terms and conditions as shall be approved by the state banking board: *Provided*, That the principal amount of capital notes or debentures outstanding at any time shall not exceed an amount equal to one hundred percent (100%) of the bank's paid-in capital stock plus fifty percent (50%) of the amount of its unimpaired surplus fund. Capital notes or debentures which are by their terms expressly subordinated to the prior payment in full of all deposit liabilities of the bank shall be considered as part of the unimpaired capital funds of the bank for purpose of the computation of the bank's loan limit. (L. 1965, ch. 83, § 1; June 30.)"

The following items should be supplied to this office for the Commissioner's review in determining the proposed issuance of capital notes or debentures.

- 1) The dollar amount, maturity and interest cost associated with the proposed issuance. A copy of the proposed note or debenture instrument.
- 2) The reason(s) for the proposed issuance.
- 3) A projection of earnings throughout the life of the notes or debentures which includes recognition of the interest expense associated with the notes.
- 4) State whether any director, officer or stockholder will personally benefit from the proposed issuance. If so, please describe. If the bank is owned by a holding company, identify any management fee paid to the holding company and describe the services received.
- 5) A copy of the most recently completed daily statement and earnings report.
- 6) A brief description of any material pending legal proceedings the bank may be involved in.
- 7) A legal opinion as to the required content and adequacy of disclosure material to be made available to proposed investors. A copy of the legal opinion and the proposed disclosure is to be included in the application.
- 8) All documents and information evidencing compliance with K.S.A. 9-1101(a).

In addition to the information described above, the Commissioner requires the establishment of a capital reserve for the retirement of the notes or debentures. Funding of the reserve on a quarterly basis is preferred. If funding on a less frequent basis is planned, information specifically discussing the proposal should be included. Reserve transfers are to be made prior to the payment of stock dividends.

Additionally, the Kansas City Regional office of the FDIC must receive a copy of the above information.