

**STATE OF KANSAS  
STATE BANK COMMISSIONER  
SPECIAL ORDER 2010-1**

This Special Order issued this 7th day of June 2010, by the State Bank Commissioner (Commissioner).

**WHEREAS**, the Comptroller of Currency (OCC) has stated that a national bank is authorized, pursuant to 12 U.S.C. § 24(Seventh) and 29, 12 C.F.R. 5.36, and OCC Interpretive Letters #1118 and #1123, to exchange real property or a participation interest in real property permissibly acquired through debts previously contracted (DPC) for other types of real and personal property as long as it is done in good faith by the bank to improve its ability to recover, or otherwise limit its loss on the DPC property, and as shall be approved by the OCC; and

**WHEREAS**, no provision of Kansas law presently allows a Kansas state-chartered bank to exchange its participation interest in other real estate owned (OREO) acquired through DPC for an interest in a corporate entity which would manage, market and dispose of the real property; and

**WHEREAS**, K.S.A. 9-1715, as amended, grants the Commissioner the power to authorize Kansas state-chartered banks to engage in any activity in which such banks could engage were they operating as a national bank; and

**WHEREAS**, the Commissioner deems the issuance of this Special Order to be reasonably required to preserve the welfare of state banks and to promote the competitive equality of state banks and other insured depository institutions.

**IT IS THEREFORE ORDERED**, that subject to the limitations and conditions set forth in this Special Order, a Kansas state-chartered bank is hereby authorized to exchange its participation interest in OREO acquired through DPC for an interest in a corporate entity which will manage, market and dispose of the real property.

**IT IS FURTHER ORDERED**, prior to making the exchange, the bank's directors must determine that the exchange is in the best interest of the bank and would improve the ability of the bank to recover, or otherwise limit, its loss on the DPC property. The basis for such determination must be documented.

**IT IS FURTHER ORDERED**, prior to making the exchange, the bank must notify the Commissioner in writing of the proposed exchange, detailing the structure of the investment and the activity or activities to be conducted by the corporate entity. Also, prior to making the exchange, the bank must receive written notification of the Commissioner's approval. The approval will be based on an evaluation of the bank's risk management and measurement systems and controls to enable the bank to exchange for, hold, and dispose of the interest in the corporate entity in a safe and sound manner, and an evaluation of any other supervisory considerations relevant to the exchange; and

**IT IS FURTHER ORDERED**, the bank must certify that the bank's loss exposure is limited, as a legal and accounting matter, and the bank does not have open ended liability for the obligations of the corporate entity; and

**IT IS FURTHER ORDERED**, that the bank must certify that the enterprise in which the bank is investing agrees to be subject to supervision and examination by the Office of the State Bank Commissioner; and

**IT IS FURTHER ORDERED**, the bank may not further exchange its interest in the corporate entity for an interest in any other real or personal property. Such property would be too far removed from the bank's original DPC interest in the real estate to be considered DPC property; and

**IT IS FURTHER ORDERED**, the bank must ensure that the corporate entity complies with K.S.A. 9-1102 and K.A.R. 17-11-17, including obtaining a current appraisal of the real estate; and

**IT IS FURTHER ORDERED**, consistent with the limitations in 12 U.S.C. § 29 and 12 C.F.R. Part 34, the bank must dispose of its interest in the corporate entity no later than five years from the date it initially acquired title to the OREO, unless an extension up to an additional five years is granted by the Commissioner; and

IT IS FURTHER ORDERED pursuant to K.S.A. 9-1715(b), as amended, the terms of this Special Order shall take effect on June 7, 2010, and shall remain in full force and effect until amended or revoked by the Commissioner.

IT IS SO ORDERED.

STATE BANK COMMISSIONER

  
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J. Thomas Thull