



Office of the State Bank Commissioner

Memorandum

Memo RM98-4

TO: All State Chartered Banks with Investment Subsidiaries
FROM: W. Newton Male, Bank Commissioner
DATE: August 21, 1998
RE: Investment Subsidiary issues

As you know, the tax incentive for a bank to form a subsidiary corporation to manage the bank's securities portfolio has been eliminated by the passage of legislation during the 1998 Session of the Kansas Legislature. As a result, we have received numerous inquiries from state chartered banks concerning what information a bank is required to provide this office should the bank decide to eliminate use of the investment subsidiary. If the bank should decide to merge the subsidiary into the bank, the bank would have to file a merger application pursuant to K.S.A. 9-1724, which would include publishing notice as required by the statute, and payment of a \$1,000 fee to this office.

In some instances the bank may prefer to transfer the investment subsidiary's assets back to the bank, either in one move or over time. Given the fact the investment sub is a wholly owned subsidiary, this office has determined a transfer of this nature would NOT fall under the provisions of K.S.A. 9-1724. A letter describing the bank's plan of transfer, including a detailed list of the assets to be transferred, should be provided to this office. Please keep in mind that in most cases, the investment subsidiary was established for a singular purpose: the holding of the bank's securities portfolio. If the bank wants to utilize this subsidiary corporation for any purpose other than holding investments, prior approval must be received from this office.

Another alternative banks may want to consider is dissolving the subsidiary corporation pursuant to K.S.A. 17-6801 et seq. of the General Corporations Code. The dissolution statutes provide that upon payment of all creditors, the remaining assets of the corporation are to be distributed to the shareholders. Because the rules regarding establishment of the subsidiary (Special Order 1995-6) required the investment subsidiary to be owned 100% by the bank, all assets remaining at the time of dissolution of the subsidiary corporation would be distributed to the bank. Dissolution of the subsidiary corporation must be completed prior to any assets being transferred/distributed to the bank (K.S.A. 17-6810). Should banks choose to dissolve their investment subsidiary pursuant to the General Corporations Code, the bank must submit the following information and documents to this office.

1. The form for dissolution required by the Kansas Secretary of State is attached for your reference. The Secretary of State's office indicated the proper way to fill out the "Stockholders' Signatures" section of the form is for the President of the bank to sign and indicate the bank is the sole shareholder. Below is an example:

Stockholders' Signatures

Jim Jones, President
ABC Bank (sole shareholder)

2. A letter which describes the transaction. The letter should include a detailed list of the assets which will be absorbed by the bank following dissolution of the subsidiary corporation, including a description of each security showing the amount, maturity date, and rate.

3. A check in the amount of \$20.00 should be made payable to the Kansas Secretary of State.

Finally, before any action is taken, the bank should consider consulting their own attorney and accountant to determine if any other actions are necessary or appropriate in light of the bank's particular circumstances. Additionally, you may wish to contact your federal regulator to ascertain what, if any, filings are necessary with them.

As always, should you have any questions concerning this or any other matter, please feel free to contact this office.

Secretary of State/Corporation Division

Dissolution by Written Consent

**Form
DW**

We, the undersigned, being all the stockholders with voting power of _____
Name of Corporation

_____, a corporation organized under the laws of Kansas, do hereby consent to the dissolution of the corporation.

Stockholders' Signatures

Do not write in this space.

I hereby certify that the following is a list of officers and directors and their residence addresses of said corporation:

<u>Officers</u>					
Name	Title	Address	City	State	Zip Code

<u>Directors</u>				
Name	Address	City	State	Zip Code

(Note: If more space is needed, use the back of this form or attach a separate page.)

Signature of Officer

Title of Officer

I, _____, declare under penalty of
Name of Officer
perjury, that I am the _____ of the above-named
Title of Office Held
corporation, that the above consent has been signed by or on behalf of ALL stockholders entitled to vote on the dissolution, and that the foregoing is true and correct.

Signature of Officer

Date

Note: If this form is submitted after the close of the corporation's tax year, an annual report with franchise tax must be submitted for that year prior to the filing of the Dissolution.

Please submit this form in duplicate, with \$20 filing fee, to:

Secretary of State
2nd Floor, State Capitol
300 S.W. 10th Ave.
Topeka, KS 66612-1594
(913) 296-4564