

KANSAS

BILL GRAVES
GOVERNOR



OFFICE OF THE STATE BANK COMMISSIONER

W. Newton Male
Bank Commissioner

Judi M. Stork
Deputy Commissioner

Kevin C. Glendening
Assistant Deputy Commissioner

William D. Grant, Jr.
General Counsel

Ruth E. Glover
Administrative Officer

SPECIAL ORDER 1997-2

THIS ORDER, is hereby issued this 30TH day of MAY, 1997 by the Kansas State Bank Commissioner (commissioner) pursuant to K.S.A. 9-1715, as amended.

PART I

FOR PURPOSES OF THIS ORDER, the following definitions shall apply:

Bank means an insured bank as defined by 12 U.S.C. § 1813(h).

De Novo Branch means a branch office of a bank which is originally established by the bank and does not become a branch office of the bank as a result of a merger transaction.

Home State means:

- (a) with respect to a national bank, the state in which the main office of the bank is located; and
- (b) with respect to a state bank, the state by which the bank is chartered.

Host State means a state other than the home state of a bank in which the bank maintains a branch, or seeks to establish and maintain a branch.

Interstate Merger Transaction means a merger transaction between banks with different home states.

Kansas National Bank means a federally chartered bank, the home state of which is Kansas.

Kansas State Bank means a state chartered bank, the home state of which is Kansas.

Merger Transaction means any transaction in which a bank merges with, consolidates with, assumes liabilities of, or transfers liabilities to another bank.

Responsible Federal Agency means the federal agency determined by 12 U.S.C. § 1828(c)(2).

Resulting Bank means the bank that survives an interstate merger transaction.

PART II

WHEREAS, pursuant to 12 U.S.C. § 215a-1, national banks are authorized to engage in an interstate merger transaction, if the transaction is approved by the responsible agency, in accordance with 12 U.S.C. § 1831u; and

WHEREAS, pursuant to 12 U.S.C. § 1831u, on and after June 1, 1997, the responsible federal agency is authorized to approve an interstate merger transaction involving a Kansas national bank; and

WHEREAS, pursuant to 12 U.S.C. § 36(d), a Kansas national bank which is a resulting bank, is authorized to retain and operate as a branch, any office that any bank involved in the interstate merger transaction was operating as a main office or branch immediately before the merger transaction; and

WHEREAS, pursuant to 12 U.S.C. § 36, a Kansas national bank which is a resulting bank, is authorized to seek and acquire the Comptroller of the Currency's approval to establish and operate branches at additional locations in those host states in which the resulting bank maintains branches; and

WHEREAS, pursuant to 12 U.S.C. § 36(g), a Kansas national bank is authorized to seek and acquire the Comptroller of the Currency's approval to establish and operate a de novo branch in a host state in which the bank does not maintain a branch, if the host state has a state law expressly permitting the establishment of the de novo branch; and

WHEREAS, no Kansas statute presently allows a Kansas state bank to engage in an interstate merger transaction to the same extent as 12 U.S.C. § 215a-1 permits for Kansas national banks; and

WHEREAS, no Kansas statute presently allows a Kansas state bank, which is a resulting bank, to retain and operate as a branch, any office that any bank involved in the interstate merger transaction was operating as a main office or branch immediately before the merger transaction; and

WHEREAS, no Kansas statute presently allows a Kansas state bank, which is a resulting bank, to establish and operate branches at additional locations in those host states in which the resulting bank maintains branches; and

WHEREAS, no Kansas statute presently allows a Kansas state bank, to establish and operate a de novo branch in a host state in which the bank does not maintain a branch; and

WHEREAS, K.S.A. 9-1715, as amended, grants to the commissioner "...the power to authorize any or all state banks to engage in any activity in which such banks could engage were they operating as national banks at the time such authority is granted..."; 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 competitive equality between state banks and national banking associations, and is therefore required by statute to issue this special order;

PART III

IT IS THEREFORE ORDERED, that a Kansas state bank may engage in an interstate merger transaction in accordance with K.S.A. 17-6702, after applying for and receiving the necessary regulatory approvals as required by the terms of this order and 12 U.S.C. § 1831u.

IT IS FURTHER ORDERED, that if a proposed interstate merger transaction provides for the resulting bank's home state to be a state other than Kansas, a Kansas state bank shall not engage in the proposed merger transaction until the required approvals have been received from the resulting bank's regulatory supervisors. Such Kansas state bank shall provide written notification to the commissioner of the merger transaction at least 10 days prior to consummation. Not more than 15 days following the merger transaction the resulting bank shall surrender the former Kansas state bank's certificate of authority or charter, and shall certify in writing to the commissioner that the proper instruments have been filed in accordance with K.S.A. 17-6003, and amendments thereto.

IT IS FURTHER ORDERED, that if a proposed interstate merger transaction provides for the resulting bank to be a Kansas state bank, the transaction shall not be permitted until the Kansas state bank has applied for and received written approval from the commissioner. No such approval shall be granted before the Kansas state bank has fully complied with K.S.A. 9-1724 and the Kansas general corporation code, including, without limitation, submission of an application on a form required by the commissioner, payment of the non-refundable merger fee established by K.A.R. 17-22-1, and satisfaction of all substantive and procedural requirements which relate to the merger of a Kansas state bank.

IT IS FURTHER ORDERED, that a Kansas state bank which is a resulting bank, is authorized to retain and operate as a branch, any office that any bank involved in the interstate merger transaction was operating as a main office or branch immediately before the merger transaction.

IT IS FURTHER ORDERED, that a Kansas state bank which is a resulting bank, is authorized to establish and operate branches at additional locations in those host states in which the resulting bank maintains branches. No such authority shall be exercised before the Kansas state bank has submitted an application on a form required by the commissioner, paid the non-refundable branch bank fee established by K.A.R. 17-22-1, and satisfied all procedural requirements related to the establishment of a new branch by a Kansas state bank. The application process shall be in accordance with K.S.A. 9-1111, except administration of all procedures and approval of the application shall be the responsibility of the commissioner.

IT IS FURTHER ORDERED, that a Kansas state bank is authorized to establish and operate a de novo branch in a host state in which the bank does not maintain a branch, if the host state has a state law permitting the establishment of the de novo branch. No de novo branch shall be established or operated until the Kansas state bank has applied for and received all necessary regulatory approvals. Additionally, no such authority shall be exercised before the Kansas state bank has submitted an application on a form required by the commissioner, paid the non-refundable branch bank fee established by K.A.R. 17-22-1, and satisfied all procedural requirements related to the establishment of a new branch by a Kansas state bank. The application process shall be in accordance with K.S.A. 9-1111, except administration of all procedures and approval of the application shall be the responsibility of the commissioner.

IT IS FURTHER ORDERED, that a resulting bank, shall succeed by operation of law, without any conveyance or transfer, to all the actual or potential assets, real property, tangible personal property, intangible personal property, rights, franchises, and interests of the merged bank; and shall by operation of law continue all trust functions being exercised by the merged bank, and shall be substituted for the merged bank and shall hold and enjoy the same and all rights of property and interests of a fiduciary nature including, without limitation, as trustee, agent, executor, administrator, registrar, conservator, assignee, receiver, custodian, transfer agent, corporate trustee, corporate agent, or any other fiduciary capacity in the same manner and to the same extent as these rights and interests were held by the merged bank at the time of the merger transaction. This section is intended to be in addition to and not in exclusion of any powers, rights, duties or liabilities established on behalf of any party by K.S.A. 17-6709.

IT IS FURTHER ORDERED, that nothing in this order provides the statutory authority required by 12 U.S.C. § 36(g) and 12 U.S.C. § 1828(d) to permit a bank with a home state other than Kansas to establish and operate a de novo branch in Kansas.

IT IS FURTHER ORDERED, that nothing in this order provides the statutory authority required by 12 U.S.C. § 1831u (4) to permit an interstate merger transaction which involves acquisition of a branch located in Kansas without the acquisition of the bank.

IT IS FURTHER ORDERED, that pursuant to K.S.A. 9-1715(b), as amended, the terms of this special order shall become effective June 1st, 1997 and shall remain in full force and effect until amended or revoked by the commissioner.

IT IS SO ORDERED.

STATE BANK COMMISSIONER


W. Newton Male