

Jeremiah W. (Jay) Nixon  
Governor  
State of Missouri



Department of Insurance,  
Financial Institutions  
and Professional Registration  
John M. Huff, Director

## DIVISION OF FINANCE

301 West High Street, Room 630  
P.O. Box 716  
Jefferson City, MO 65102-0716  
(573) 751-3242  
(573) 751-9192 FAX  
[www.finance.mo.gov](http://www.finance.mo.gov)

Richard J. Weaver  
Commissioner of Finance

July 2, 2012

Re: Interpretive Letter 1-2012: Request under Section 362.106(4), RSMo. Activity requested – Missouri state-chartered banks to deal directly in Permitted Securities, for the bank’s own account, the same extent and under such limitations and restrictions as national banks.

In a letter dated May 2, 2012, you requested a determination from this office that would permit Missouri state-chartered banks to deal directly in Permitted Securities, for the bank’s own account, to the same extent and under such limitations and restrictions as federal law dictates with respect to national banks. Permitted Securities refers collectively to Type I securities and Type II securities as those terms are defined in 12 CFR Part 1.

Under § 362.106(4) RSMo, Missouri’s “Super Wildcard Law,” state-chartered banks may exercise specific powers that are requested in a notice and writing submitted to the director of finance if within the notice period the director determines that the proposed activity is not unsafe or unsound and that the bank meets the prescribed federal standards for national banks. The director may either take no action or issue an interpretive letter that specifically describes the activity permitted and any limitations on the activity.

### **National Bank Authority**

12 USC 24 (Seventh) governs investment securities national banks can purchase for its own account. Those investments are made “under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe.” Investment securities is defined in that section as “marketable obligations evidencing indebtedness of any person,

co-partnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term “investment securities” as may by regulation be prescribed by the Comptroller of the Currency.”

The OCC promulgated regulations, 12 CFR Part 1, dealing with a national bank’s ability to invest in securities for its own account. In the regulation, the OCC breaks securities options into five types. Specifically, Type I and Type II securities are defined in 12 CFR § 1.2 (j) and (k). The limitations on such investments are found in 12 CFR §1.3 (a) and (b). Additionally, the regulation defines safe and sound practice with respect to these investments in 12 CFR §1.5.

National banks may “deal in, underwrite, purchase, and sell” Type I securities with no limitation to a specified percentage of the bank’s capital and surplus. 12 CFR §1.3(a). However, national banks may only invest in Type II securities as long as the investment to any one obligor “does not exceed 10 percent of the bank’s capital and surplus.” 12 CFR §1.3(b).

### **Missouri Authority**

Investment powers for a bank to invest for its own account fall within the “powers incidental to the business of banking” found in §362.106(1) RSMo. Limitations on that power are found in § 362.170 RSMo. That provision limits investments to a bank’s legal lending limit unless the investment falls within one of the enumerated exceptions.

### **Summary and Findings**

Section 362.106 permits the Commissioner to allow a requested activity, subject to the same limitations as those imposed on national banks, with any additional limitations necessary to find that such request is safe and sound bank practice. In this case, the Commissioner finds that banks can invest, for its own account, in Type I and Type II securities as those terms are defined in 12 CFR 1.2 (j) and (k) provided that the following limitations are followed by the institution engaging in such activities to address the Division’s safety and soundness concerns.

First, only state-chartered institutions that are well capitalized and have a composite CAMELS rating of 1 or 2 may invest in Type I or Type II securities (Permitted Securities) not otherwise allowed under § 362.170. Should a bank make such an investment in Permitted Securities and subsequently drop below CAMELS rating of 1 or 2, the bank must contact the Division regarding its plan to divest of such investments.

Second, prior to engaging in such investment activity, the bank must submit detailed policies and procedures to the Division and the appropriate federal regulator for review and comment. Those policies should address, at a minimum, issues raised in 12 CFR § 1.5 and how the bank will provide a sound internal control environment to mitigate the market and legal risks associated with the Requested Securities investments.

Third, prior to engaging in the investment activity, the bank must demonstrate it has an experienced management team with expertise in Permitted Securities.

Finally, as required by § 362.106.4, the bank must comply with the restrictions a national bank would follow when engaging in this activity. In this case, those restrictions are found in 12 USC 24 (Seventh) and 12 CFR Part 1 and include but are not limited to a prohibition on buying stock.

This letter will be filed today with the Office of the Missouri Secretary of State and posted on our website at [www.finance.mo.gov](http://www.finance.mo.gov). It will become effective ten (10) days after filing with the Secretary of State. If you have any questions regarding this matter, please do not hesitate to contact Chief Counsel Christie Kincannon with our office at (573) 751-4297.

Very truly yours,



Richard J. Weaver  
Commissioner of Finance

RJW:pn

cc: Commission Division  
Secretary of State