

October 31, 2005

Re: Interpretive Letter 1-2005      Request Section 362.106(4), RSMo.  
Activity – Bank Investment in Banker’s  
Bank

In an October 7, 2005, letter on behalf of your bank you requested a determination by the Missouri Division of Finance that a Missouri state-chartered bank be authorized to invest in a banker’s bank or its holding company to the same extent as a national association (bank) pursuant to 12 U.S.C. Section 24, seventh. In particular you are concerned with obtaining the benefit of the provisions of federal law that authorize a national bank to invest an amount up to *ten percent* of the bank’s *capital and unimpaired surplus* in a banker’s bank provided that the bank does not hold more than five percent of the voting securities of the banker’s bank or its holding company. 12 U.S.C. Section 24, seventh.<sup>1, 2</sup>

Missouri law at Section 362.172, RSMo, authorizes a Missouri bank or bank holding company the authority to invest an amount *not to exceed five percent of its capital, surplus and undivided profits* in shares of stock in a banker’s bank (or its holding company) for such a bank authorized to do business in the state of Missouri.

Thus, both the Missouri statute and the federal statute authorize state and national banks, respectively, to invest in and obtain an ownership interest in a “banker’s bank” These are specialty banks providing services to other banks. (See, 12 USC Section 27(b) defining banker’s bank). However, each statute presents variations in limitations on this authority including the permissive amount of investment. Your request essentially would authorize a Missouri bank to obtain the benefit of either state or federal law as bank management deems most suitable and convenient.

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<sup>1</sup> 12 U.S.C. 24, seventh limits an investment in a banker’s bank as follows: “...but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time *10 per centum of the association's capital stock and paid in and unimpaired surplus* and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company....”

<sup>2</sup> 12 U.S.C. 24, seventh provides a higher percentage authorization and defines the base to which the percentage applies slightly differently compared to Missouri law. The applicable definitions of “capital” and “unimpaired surplus” are found at 12 CFR part 3.100 – (a) and (d) respectively. Unimpaired surplus is in turn defined by reference back to the definition of “surplus” at (c) and includes both capital surplus and undivided profits. To this extent it is comparable to the Missouri base used in Section 362.172, RSMo.

Under Section 362.106(4), RSMo, Missouri's "Super Wildcard Law" a Missouri state-chartered bank 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.

### **Determination**

The Division of Finance determines that a Missouri state-chartered bank may invest **not to exceed ten percent of its "unimpaired capital"**<sup>3</sup> in shares of stock in a banker's bank **provided that the bank acquires no more than five percent of the voting shares of such bank.** This determination more specifically describes the activity permitted and imposes a modest limitation in that it does not utilize the full federal base defined in 12 CFR part 3.100 (c) and (d) (surplus and unimpaired surplus defined in those regulations) but instead follows state law in this regard, particularly by adopting a base that is expressly defined and prudently limited for Missouri banks in Section 362.170.1, RSMo.

The Division of Finance determines that the proposed activity is not an unsafe and unsound practice provided the bank meets the prescribed standards and limitations for the activity.

### **Findings**

The Division of Finance finds that the investment authority requested above is authorized by federal law for national banks.

The determination essentially increases the permitted investment by a Missouri bank in a banker's bank under Missouri law from five percent to ten percent of the investing bank's capital, surplus and undivided profits. While the percentage is doubled the concentration risk presented to the bank is still reasonably and prudently limited. The base to which the percentage applies is tied to the investing bank's legal lending limit under state law. This definition and base has a proven history and provides a standard with which all Missouri banks are familiar.

The Division's limitation of the base to which the percentage applies simplifies implementation by conforming the federal definition of surplus and undivided profits to the slightly more restrictive Missouri definition of unimpaired capital used in Section 362.170.1, RSMo. This definition is inclusive of the factors in Section 362.172, RSMo but is more clearly defined and prudently limits the amount of goodwill allowed. This modest limitation is also intended to avoid confusion in implementing this new authority by Missouri state-chartered banks.

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<sup>3</sup> As defined in Section 362.170.1, RSMo, for loan limit purposes including the limitation on goodwill. This definition is inclusive of the base used in Section 362.172, RSMo, but is more clearly defined and limits the amount of goodwill allowed in the base.

Subject to the limitations presented in this letter the proposed activity does not present an unsafe and unsound activity. Any bank considering such an investment should exercise normal diligence prior to making an investment and subsequently in monitoring and evaluating the investment.

This letter will be filed today with the Office of the Missouri Secretary of State and posted on the public internet website of the Division of Finance [www.missouri-finance.org](http://www.missouri-finance.org). This letter is effective ten days after filing with the Secretary of State. Any Missouri bank may conduct the activity authorized under this letter subject to the standards and limitations imposed. If you have any questions regarding this matter please contact Keith Thornburg, our chief counsel.

Very truly yours,

A handwritten signature in cursive script that reads "D. Eric McClure".

D. Eric McClure  
Commissioner of Finance

DEM:pn