

November 1, 2005

Re: Interpretive Letter 2-2005      Request Section 362.106(4), RSMo.  
Activity – Notice of Shareholder Meeting

In an October 17, 2005, letter on behalf of your bank you requested a determination by the Missouri Division of Finance that a Missouri state-chartered bank or trust company be authorized to provide notice of shareholder meetings on the same basis and subject to the same standards and requirements as applicable to a national bank that is located in Missouri.

Under express corporate governance requirements applicable to national banks a national bank located in Missouri has the option to follow the Missouri Model Business Code. As a result, notice of shareholder meetings for a national bank based in Missouri is pursuant to Section 351.230, RSMo. Written or preprinted notice is required and if sent by mail the notice is deemed delivered when deposited in the United States mail with postage pre-paid. No published notice is required. See, 12 CFR 7.2000.<sup>1</sup>

Alternatively, the Comptroller of currency has prescribed a notice procedure at 12 CFR 7.2001. This procedure likewise does not require published notice for shareholder meetings.<sup>2</sup>

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<sup>1</sup> **§7.2000 Corporate governance procedures.**

(a) *General.* A national bank proposing to engage in a corporate governance procedure shall comply with applicable Federal banking statutes and regulations, and safe and sound banking practices.

(b) *Other sources of guidance.* To the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, a national bank may elect to follow the corporate governance procedures of the law of the state in which the main office of the bank is located, the law of the state in which the holding company of the bank is incorporated, the Delaware General Corporation Law, Del. Code Ann. tit. 8 (1991, as amended 1994, and as amended thereafter), or the Model Business Corporation Act (1984, as amended 1994, and as amended thereafter). A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.

(c) *No-objection procedures.* The OCC also considers requests for its staff's position on the ability of a national bank to engage in a particular corporate governance procedure in accordance with the no-objection procedures set forth in Banking Circular 205 or any subsequently published agency procedures.<sup>2</sup> Requests should demonstrate how the proposed practice is not inconsistent with applicable Federal statutes or regulations, and is consistent with safe and sound banking practices.

<sup>2</sup> Available upon request from the OCC Communications Division, 250 E Street, SW., Washington, DC 20219, (202) 874-4700.

<sup>2</sup> **§7.2001 Notice of shareholders' meetings.**

A national bank must mail shareholders notice of the time, place, and purpose of all shareholders' meetings at least 10 days prior to the meeting by first class mail, unless the OCC determines that an emergency circumstance exists. Where a national bank is a wholly- owned subsidiary, the sole shareholder is permitted to waive notice of the shareholder's meeting. The articles of association, bylaws, or law applicable to a national bank may require a longer period of notice.

In comparison to the procedure applicable to this activity by a national bank – a Missouri state-chartered bank or trust company effects notice of shareholder meetings under Section 362.044, RSMo. Under subsection four a published notice is required in addition to a written or printed notice that is personally delivered or mailed to each shareholder. Missouri’s business code provides for shareholder notice as follows:

**351.230. Shareholders' meetings--notice of, how given, contents of -**

1. Written or printed notice of each meeting of shareholders stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten or more than seventy days before the date of the meeting, by or at the direction of the president, or the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. Written notice shall include, but not be limited to, notice by electronic transmission which means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

2. Any notice of a shareholders' meeting sent by mail shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid addressed to the shareholder at his address as it appears on the records of the corporation.

3. Attendance of a shareholder at any meeting shall constitute a waiver of notice of such meeting except where a shareholder attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Under Section 362.106(4), RSMo, Missouri’s “Super Wildcard Law” a Missouri state-chartered bank or trust company 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 Missouri Division of Finance determines that, pursuant to Section 362.106(4), RSMo, a Missouri state-chartered bank may provide notice of special or annual meetings of shareholders pursuant to the requirements of Section 362.044, RSMo or alternatively, pursuant to Section 351.230, RSMo, on the same basis as a national bank located in Missouri.

The Missouri Division of Finance does not authorize Missouri state-chartered banks to adopt the Delaware corporate code or the American Bar Association's Model Business Code. The timing of the notice shall be according to Section 351.230 RSMo (not less than ten or more than seventy days).

The Division of Finance finds 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 activity (notice procedure for shareholder meetings) requested above is authorized by federal law for national banks.

The determination relieves Missouri state-chartered banks of a cost (publication costs) not shouldered by national banks with which they compete. The publication requirement was removed from Missouri's business code decades ago.

The publication requirement provides limited benefit to bank shareholders in light of the express requirements requiring a printed or written notice to be delivered by mail or electronically. Mail delivery, transportation systems and communications systems today are much more reliable and universal than 40, 50, 60 or more years ago.

There are many alternatives to print media today such that locally published newspapers would not necessarily be subscribed by a bank's shareholder base. In addition, since the 1970s in-state bank branching restrictions have been lifted and since the 1990s interstate branching restrictions have been eased. An indirect result is that the stock of state-chartered banks structured on a community based banking model tends to be more widely held (there are relatively few one-facility banks today) and a local newspaper publication is unlikely to reach many shareholders.

Bank shareholder meetings are not required to be open to the public thus a published notice serves no public function.

Finally, in contrast to other privately owned corporations – significant financial information regarding banks is required by law to be published or made publicly available showing the financial condition and solvency of a bank (or trust company). For example bank financial statements are either published or provided to the public free of charge pursuant to Section 362.295, RSMo. These reports may also be accessed at [www.fdic.gov](http://www.fdic.gov). Thus, public information regarding banks and trust companies will continue to be made publicly available.

Continuing a mandatory publication requirement for Missouri banks and trust companies imposes costs that are necessarily passed on to the public and places state-chartered community banks at a competitive disadvantage compared to national banks.

Subject to the limitations presented in this letter the proposed activity does not present an unsafe and unsound activity and in fact will improve the financial condition and competitiveness of Missouri state-chartered banks and trust companies while assuring sound corporate governance practices are continued.

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 or trust company 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 black ink that reads "D. Eric McClure". The signature is written in a cursive style with a large, stylized "D" and "M".

D. Eric McClure  
Commissioner of Finance

DEM:pn