

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2907

By: Blackburn

AS INTRODUCED

An Act relating to banks; amending 6 O.S. 2001, Section 102, which relates to definitions for banks and trust companies; exempting certain registered marks used by bank from confusingly similar name prohibition; amending 6 O.S. 2001, Section 208, which relates to records of the Banking Department; exempting certain reports from being part of public record; requiring certain requests for examination reports provide certain documentation; allowing for certain copying fees; amending 6 O.S. 2001, Section 301, which relates to certificates of authority; requiring application to obtain certificate; amending 6 O.S. 2001, Section 304, which relates to expenses of organization; allowing for issuance of certificate of authority by Commissioner; amending 6 O.S. 2001, Section 305, which relates to individual seeking authority to engage in banking; requiring submission of offering circular with application if subscribers not yet known; amending 6 O.S. 2001, Section 306.1, which relates to filing of application; requiring publication of notice for two weeks; amending 6 O.S. 2001, Section 307.1, which relates to objective of Commissioner; allowing Commissioner discretion to permit or deny certain hearings; amending 6 O.S. 2001, Section 308, which relates to hearings; allowing for permission of hearing by Commissioner; amending 6 O.S. 2001, Section 309, which relates to the filing of charter applications; deeming certain records of applicant to be confidential; amending 6 O.S. 2001, Section 310, which relates to hearing on applications; providing for hearings by Board on certain applications; allowing Board to adopt own findings of fact and conclusions of law; requiring expenses of court reporter to be paid by applicant; allowing Board to reject or accept any earlier findings of fact or conclusions of law; requiring Board to adhere to Oklahoma Administrative Procedures Act; amending 6 O.S. 2001, Section 311.1, which relates to certificates of authority; updating certain language; amending 6 O.S. 2001, Section 312, which relates to contents of verified application for certificates of authority; requiring disclosure in verified application of amount of capital the bank has collected; amending 6 O.S. 2001, Section 313, which relates to approval or denial of certain applications; providing time parameters when bank must commence business after approval of application; amending 6 O.S. 2001, Section 710, which relates to preemptive rights of shareholders; requiring unanimous approval by shareholders to remove certain rights from certificate of incorporation; amending 6

O.S. 2001, Section 806, which relates to investments by banks; allowing bank to invest in certain securities; amending 6 O.S. 2001, Section 1004, which relates to deposits of securities with Commissioner; increasing certain deposit requirements; allowing for purchase of bond in lieu of deposit; requiring court order for release of certain funds; providing for pro rata distribution of funds in certain circumstances; amending 6 O.S. 2001, Section 1005, which relates to certain requirements of trust companies; allowing trust company to purchase bond in lieu of depositing securities with Commissioner; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 6 O.S. 2001, Section 102, is amended to read as follows:

Section 102. As used in the Banking Code unless the context otherwise requires:

1. "Acquisition" or "acquire" means any act or action with respect to the ownership or control of a bank or the purchase of its assets and the assumption of its liabilities which would require the approval of the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956, as amended, or the Office of Thrift Supervision under the Savings and Loan Holding Company Act, as amended;

2. "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, third-party claims, cross claims, setoff, suit in equity, arbitration and any other proceedings in which rights are determined;

3. "Bank" means any bank authorized and chartered by the laws of this state to engage in the banking business, or any bank chartered by the office of the Comptroller of the Currency with its main office in this state;

4. "Banking company" means any bank;

5. "Bank holding company" means any Oklahoma corporation which directly or indirectly owns or controls at least one bank or out-of-state bank as defined in this section;

6. "Board" when used with an initial capital letter means the Banking Board of this state;

7. "Branch bank" means any place of business separated from the main office of a bank at which deposits are received, or checks paid or money lent;

8. "Capital" shall include the paid-in common capital stock account, preferred stock account, surplus account, undivided profits account, capital reserves (other than contingency reserves), allowance for possible loan losses and mandatory convertible instruments that are convertible into common stock. "Capital" shall also include all other approved subordinated notes and debentures, having an original weighted average maturity of at least seven (7) years, to the extent their maturity date exceeds five (5) years. As such notes and debentures approach maturity of less than five (5) years, they shall be considered "capital" in proportion to their years to maturity as it bears to five (5) years;

9. "Commissioner" means the State Banking Commissioner appointed and serving pursuant to this act, who shall be the Commissioner of Banking and who shall administer and enforce the applicable provisions of this act;

10. "Community" means a city, town or incorporated village of this state, or a trade area in this state in unincorporated territory;

11. "Company" means any corporation, association, partnership, business trust or similar organization, but shall not include any corporation, the majority of the shares of which are owned by the United States or by any state;

12. "Compliance review committee" means:

- a. an audit, loan review or compliance committee appointed by the Board of Directors of an insured depository institution, or
- b. any other person to the extent the person acts in an investigatory capacity at the direction of a compliance review committee;

13. "Compliance review documents" means documents prepared for or created by a compliance review committee;

14. "Confusingly similar name" means:

- a. as applied to the name of any bank, a name which is identical to that of any other bank located within this state, or a name which:
  - (1) contains one or more of the following words with or without the words "State," "National," or "Trust": American, Central, Citizens, City, Commerce, Commercial, Community, Exchange, Farmers & Merchants, First, Guaranty, Oklahoma, Peoples, Security or United,
  - (2) does not contain a geographical name (other than "Oklahoma") descriptive of the immediate location of the bank (street, town, city, county or other local geographical name),
  - (3) does not contain other unique or clearly distinguished words or marks, and
  - (4) is not a federally registered trade name, trademark or service mark owned by or licensed to the particular bank, ~~or~~
- b. as applied to the name of any person not a bank, a name which is confusingly similar in spelling or wording or sound to the name of any bank located anywhere within this state, if such name would tend to suggest falsely to the public that the person is a

bank or is affiliated with the bank, directly or indirectly. However, nothing contained in this subsection shall prohibit the use of a similar name by a corporation which is in a relationship to the bank of parent, subsidiary, brother-sister corporation or other commonly controlled company, or

c. notwithstanding anything to the contrary in subparagraph a or b of this paragraph, the name or shortened name of a bank shall not be considered confusingly similar when used in conjunction with a federally registered trademark or service mark owned by or licensed to the particular bank. Proof of ownership or license of a federally registered mark must be provided to the Banking Department.

The Board shall promulgate rules which govern the use of "confusingly similar names" as defined in this paragraph;

15. "Consumer banking electronic facility" means any electronic device owned, operated, leased by or on the behalf of a bank, savings association, or credit union other than a telephone or modem operated by a customer of a depository institution, to which a person may initiate an electronic fund transfer. The term includes without limitations, a point-of-sale terminal, automatic teller machines, automated loan machines, video banking centers, or any other similar electronic devices;

16. "Continuing bank" means a merging bank the charter of which becomes the charter of the resulting bank;

17. "Control" means control as such term is defined under the Federal Bank Holding Company Act of 1956, as amended, 12 U.S.C., Section 1841;

18. "Converting bank" means a bank converting from a state to a national bank, or the reverse;

19. "Court" means a court of competent jurisdiction;

20. "Department" means the Oklahoma State Banking Department created by this Code;

21. "Deposits" means all demand, time and savings deposits of individuals, partnerships, corporations, the United States and states and political subdivisions of the United States, deposits of banks, foreign governments, institutions, deposits held by foreign banking offices or corporations organized pursuant to 12 U.S.C., Sections 601 through 604a, or Sections 611 through 631, as amended. Determinations of deposits shall be made by the Commissioner by reference to regulatory reports of condition or similar reports filed by banks or savings associations with state or federal regulatory agencies;

22. "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at one or more or all of the offices of a bank or an out-of-state bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any one or more of the following: fires; floods; earthquakes; hurricanes; wind, rain or snow storms; labor disputes and strikes; power failures; transportation failures; interruptions of communication facilities; shortages of fuel, housing, food, transportation or labor; robberies or attempted robberies; actual or threatened enemy attack; epidemics or other catastrophes; riots, civil commotions and other acts of lawlessness or violence, actual or threatened;

23. "Executive officer", when referring to a bank, out-of-state bank, or trust company, means any person designated as such in the bylaws and includes, whether or not so designated, the chairman of the board of directors, chairman of the executive committee, the president, any vice-president, the trust officer, the treasurer, the

cashier, the comptroller and the secretary, or any person who performs the duties appropriate to those offices;

24. "Federal Reserve Act" means the Act of Congress approved December 23, 1913, (38 Stat. 251), as amended;

25. "Federal Reserve Bank" means the Federal Reserve Banks created and organized under authority of the Federal Reserve Act;

26. "Federal Reserve Board" means the Board of Governors of the Federal Reserve System created and described in the Federal Reserve Act, as amended;

27. "Fiduciary" means original or successor trustee of an expressed or implied trust, including, but not limited to, a resulting or constructive trust, special administrator, executor, administrator, administrator common trust agreement, guardian, guardian-trustee or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust acting alone or with others;

28. "General obligation" means obligations of the State of Oklahoma or a political subdivision of this state and of any other state or political subdivision thereof supported by the full faith and credit of the obligor. It includes all obligations payable from a special fund when the full faith and credit of a state or any political subdivision of a state is obligated for payment into the fund of amounts which will be sufficient to provide for all required payments in connection with the obligation. It implies an obligor possessing resources sufficient to justify faith and credit;

29. "Good faith" means honesty in fact in the transaction and some reasonable ground for belief that the transaction is rightful or authorized;

30. "Insolvent" means that the actual cash market value of a bank's assets is insufficient to pay its liabilities other than its capital stock, surplus and undivided profits, or that the bank is

unable to meet the demands of its creditors in the usual course of business;

31. "Insured depository institution" means any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

32. "Interstate merger transaction" means a merger between two banks, two savings associations or a bank and a savings association, one of which is chartered by or has its main office located in this state, and the other of which is an out-of-state bank as defined in this section;

33. "Investment securities" means marketable obligations in the form of bonds, notes or debentures which are commonly regarded as investment securities. It does not include investments which are predominantly speculative in nature;

34. "Item" means any instrument for the payment of money even though not negotiable, but does not include money;

35. "Legal newspaper" means a newspaper qualified to publish legal notices under the provisions of Section 106 of Title 25 of the Oklahoma Statutes;

36. "Loan review committee" means a person or group of persons who, on behalf of an insured depository institution, reviews loans held by such institution for the purpose of assessing the credit quality of the loans, compliance with the loan policies of such institution, and compliance with the applicable state and federal laws, regulations and rules;

37. "Local media" means:

- a. any newspaper, radio station or television station with its main office located in the same city or town in which a particular main office of a bank is located, and
- b. other means or media of advertising, including without limitation any outdoor signage on the premises of the



bank, billboards, bulk mailings and other solicitations to persons who are not customers of the bank, but only to the extent that any such advertising is strictly limited in geographical location or distribution to the same city or town, including the immediate surrounding unincorporated rural area, where the particular main office of the bank is located;

38. "Main bank" means the office location which has been designated by the State Banking Commissioner or Comptroller of the Currency as the main office of a bank;

39. "Main office" means either the main bank or the main office location of a savings association;

40. "Managing officer" means the chief executive officer of the bank;

41. "Member bank" means any national bank, state bank or banking and trust company which becomes a member of the Federal Reserve System;

42. "Merger" includes consolidation;

43. "Military banking facility" means a facility maintained by a bank upon a military installation, provided the facility must be within the confines of a military reservation and located upon property owned or leased by the United States government;

44. "Mobile" means the ability to be moved, picked up, rolled, pulled or driven;

45. "Multibank holding company" means an Oklahoma corporation which directly or indirectly owns or controls two or more banks, two or more bank holding companies, or one or more of each as defined in this section;

46. "National Bank Examiner" or "Federal Bank Examiner" means any person employed as a bank examiner by the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Reserve Board or Bank;

47. "Office" means any place at which a bank or an out-of-state bank transacts its business or conducts operations related to its business;

48. "Officer", when referring to a bank, out-of-state bank or trust company, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant trust officer, assistant vice-president, assistant treasurer, assistant cashier, assistant comptroller, assistant secretary, auditor or any person who performs the duties appropriate to those offices;

49. "Order" means all, or any part, of the final disposition, whether affirmative, negative, injunctive or declaratory in form, by the Commissioner or the Banking Board, of any matter other than the making of regulations of general application;

50. "Out-of-state bank" means a national bank or a state or federal savings association which has its main office located in a state other than Oklahoma, or a bank chartered by a state other than Oklahoma;

51. "Out-of-state bank holding company" means a bank holding company which is not incorporated in this state and which directly or indirectly owns or controls one or more banks or out-of-state banks as defined in this section;

52. "Person" means an individual, group of individuals, board, committee, partnership, firm, association, corporation or other entity;

53. "Political subdivision" includes a county, city, town or other municipal corporation, a public authority, and generally any publicly owned entity which is an instrumentality of the state or a municipal corporation;

54. "Principal place of business of a bank or a bank holding company" means the state in which the total deposits of the bank or the bank subsidiaries of the bank holding company are the largest;

55. "Reason to know" means that upon the information available a person of ordinary intelligence in the particular business, or of the superior intelligence or experience which the person in question may have, would infer that the fact in question exists or that there is such a substantial chance of its existence that, if exercising reasonable care with reference to the matter in question, conduct would be predicated upon the assumption of its possible existence;

56. "Resulting bank" means the combined banks and trust companies carrying on business upon completion of a merger;

57. "Retailer" means a person, corporation or partnership, primarily engaged in the sale of goods at retail to the general public;

58. "Savings association" means any savings and loan association or savings bank chartered under the laws of this state or the laws of the United States authorized to engage in the savings and loan business with its main office located in this state;

59. "Savings association branch" means any place of business separated from the main office of a savings association at which deposits are received, checks paid or money lent;

60. "Subsidiary" with respect to a specified bank holding company or multibank holding company means a subsidiary as the term is defined in the Federal Reserve Bank Holding Company Act of 1956, as amended, 12 U.S.C., Section 1841; and

61. "Trust company" means:

- a. any person doing a trust company business as set forth in this Code except an incorporated or unincorporated organization which is organized under Section 501(c)(3) of the Internal Revenue Code as being organized and operated exclusively for educational,

religious, charitable, or other eleemosynary purposes when exercising powers pursuant to the Oklahoma Charitable Fiduciary Act and the Oklahoma General Corporation Act, and

- b. the trust departments of banks authorized to engage in the trust company business.

SECTION 2. AMENDATORY 6 O.S. 2001, Section 208, is amended to read as follows:

Section 208. A. The following records in the Oklahoma State Banking Department are designated as public records:

1. All applications for state bank charters and supporting information with the exception of personal financial records of individual applicants;
2. All records introduced at public hearings on bank charter applications;
3. Information disclosing the failure of a state bank, an out-of-state bank and branches of out-of-state banks located in this state and the reasons therefor;
4. Reports of completed investigations which uncover a shortage of funds in a bank, an out-of-state bank and branches of out-of-state banks located in this state, after the reporting of the shortage to proper authorities by the State Banking Commissioner. However, nothing in this paragraph shall be construed to mean that reports prepared by the Department in connection with routine, special, or conversion examinations of banks, trust companies, or other entities subject to examination by the Department are public record;
5. Names of all stockholders and officers of banks, out-of-state banks, out-of-state bank holding companies, and branches of out-of-state banks located in this state filed in the office of the Secretary of State; and

6. Regular financial call reports issued at the time of the state bank calls.

B. All other records in the Department shall be confidential and not subject to public inspection. However, the Banking Board, Commissioner, or Deputy Commissioner may divulge such confidential information with the written approval of the Commissioner after receipt of a written request which shall:

1. Specify the record or records to which access is requested; and

2. Give the reasons for the request. Such records may also be produced pursuant to a valid judicial subpoena or other legal process requiring production, if the Commissioner determines that the records are relevant to the hearing or proceeding and that production is in the best interests of justice. The records may be disclosed only after a determination by the Commissioner that good cause exists for the disclosure. Either prior to or at the time of any disclosure, the Commissioner shall impose such terms and conditions as the Commissioner deems necessary to protect the confidential nature of the record, the financial integrity of any institution to which the record relates, and the legitimate privacy interests of any individual named in such records. If any request is made for a copy of an examination report relating to a state bank, trust company, savings association, or credit union, the request must be accompanied by documentation which indicates no objection by the primary federal regulator having jurisdiction over the bank, trust company, savings association, or credit union to which the examination report relates.

C. All documents which the Department is required, by any provision of the Oklahoma Banking Code or by any other statute or regulation of this state, to retain or preserve in its possession may be retained and preserved, in lieu of retention of the original records or copies, in an electronic format and stored by electronic

imaging or otherwise so that the documents may be later reproduced as necessary. Any such electronically stored or imaged document or reproduction shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

D. With respect to records of the Department which are considered public records, and which are subject to the Oklahoma Open Records Act, the Department may charge a document copying fee of twenty-five cents (\$0.25) per page. With respect to records of the Department which are not considered public records, the Department may charge a document copying fee of One Dollar (\$1.00) per page, and when the Commissioner, pursuant to the provisions of paragraph 2 of subsection B of this section, permits the inspection or copying of an examination report prepared by the Department, a minimum fee of One Hundred Dollars (\$100.00) shall be charged.

SECTION 3. AMENDATORY 6 O.S. 2001, Section 301, is amended to read as follows:

Section 301. From and after the passage of the Oklahoma Banking Code no certificate of authority to engage in the banking or trust company business in this state shall be issued, and no bank or trust company or person shall be permitted to engage in such business within Oklahoma except on certificate issued by the Commissioner upon approval of the Board of an application for authority to organize a state bank or trust company. The issuance of such certificate shall be within the sole discretion of the Board.

SECTION 4. AMENDATORY 6 O.S. 2001, Section 304, is amended to read as follows:

Section 304. A. Each subscriber at the time the subscriber subscribes to the stock of a proposed state bank or trust company shall pay in cash a sum at least equal to five percent (5%) of the par value of such stock into a fund to be used to pay the expenses of organization. No organizational expense shall be paid out of any other funds of the bank.

B. Upon the ~~grant~~ issuance of a certificate of authority by the Commissioner any unexpended balance shall be transferred to undivided profits. If the application has been finally denied, any unexpended balance shall be distributed among the contributors in proportion to their respective contributions. The Commissioner may require an accounting of disbursements from the fund and may order the organizers to restore any sum which has been expended for other than proper organizational expenses.

C. No payment shall be made from the organizational expense fund for obtaining subscriptions to stock.

D. Any financial arrangement or transaction involving the proposed bank or trust company and its organizers, directors, officers or principal shareholders shall be disclosed.

SECTION 5. AMENDATORY 6 O.S. 2001, Section 305, is amended to read as follows:

Section 305. A person seeking authority to organize a state bank or trust company shall submit the original and ten copies of an application for authority to organize a state bank or trust company. Two copies of the proposed certificate of incorporation and proposed bylaws shall be filed with the application. The application ~~and certificate of incorporation~~ shall be signed under oath by each of the organizers.

A. Contents of application. The application shall include the following information:

1. The proposed location;
2. The amount of the capital stock and the class or classes of capital stock proposed to be issued;
3. The corporate name, which shall not be confusingly similar to that of any existing institution in the proposed community;
4. The names of the subscribers to the capital stock and the amount of stock to which each subscribed. If the names of the subscribers are not yet known, the applicant must also submit a copy

of any offering circular that may be used in connection with soliciting subscriptions to the capital stock of the proposed bank;

5. The names of the persons, partnerships, associations, or corporations which propose to own or control more than one-half (1/2) of the capital stock;

6. The names of the proposed directors;

7. Evidence of the character, financial responsibility and ability of the organizers and proposed directors;

8. Evidence of the need and advisability of ~~granting such authority~~ approving the application to organize;

9. The past and present connection with any bank or trust company, other than as a customer on terms generally available to the public, of each proposed director and each subscriber to more than five percent (5%) of the capital stock; and

10. Any other information which the Commissioner may require.

B. Statement to be signed under oath. The application shall contain a statement that the requirements of Sections 303 and 304 of this title have been met. The statement shall be signed by the organizers and verified under oath.

C. Proposed Certificate of Incorporation. The proposed certificate of incorporation shall contain the following:

1. The name of the bank or trust company;

2. If the bank is to exercise trust powers, a statement to that effect;

3. The business street address, including city or town, and county in which it is to be located;

4. The amount of capital, the number of shares of each class, the relative preferences, powers and rights of each class, the par value of the shares of each class and the amount of the paid-in surplus;



5. A statement whether voting for directors shall or shall not be cumulative and the extent of the preemptive rights of stockholders;

6. The names and places of residence of the organizers and the number of shares subscribed by each;

7. The term of its existence, which shall be perpetual;

8. The board of directors of the proposed bank or trust company who shall serve until the next annual meeting of the stockholders, or until their successors are regularly elected and qualified; and

9. Such other proper provisions to govern the business and affairs of the bank or trust company as may be desired by the organizers.

SECTION 6. AMENDATORY 6 O.S. 2001, Section 306.1, is amended to read as follows:

Section 306.1 A. Once the Commissioner is satisfied that the organizers have substantially complied with the requirements of Sections 304 and 305 of this title, the Commissioner shall accept the application for filing and shall notify the organizers of the acceptance. Applicants shall have one opportunity to correct deficiencies. Deficiencies that are not corrected adequately when the application is resubmitted may cause the application to be considered withdrawn or disapproved.

B. Within ten (10) days after the Commissioner has accepted an application for filing, the applicant shall publish notice of the filing in a legal newspaper of general circulation in the city, town, or county in which the proposed bank or trust company is to be located. The notice shall be published on the same day ~~of~~ for two (2) consecutive weeks and shall contain a statement that an application has been submitted, the names of the organizers, the name and location of the proposed bank or trust company and the date on which the application was accepted for filing.

The applicant shall promptly furnish the Commissioner an affidavit evidencing such publication.

SECTION 7. AMENDATORY 6 O.S. 2001, Section 307.1, is amended to read as follows:

Section 307.1 A. Objectives. The primary objectives of the Commissioner and the Board shall be to maintain a sound banking system, to encourage a competitive banking environment and to provide convenience to the public.

B. Comments or objections. Within twenty-one (21) days after the first notice by publication as described in Section 306.1 of this title, any interested person may submit to the Commissioner written comments or objections to organization of the proposed bank, or a request for an opportunity to be heard by the Commissioner at a hearing held prior to consideration by the Board of the application for authority to organize. Any request for opportunity to be heard shall set forth reasons justifying the time and expense entailed by such hearing before the Commissioner. In the sole discretion of the Commissioner, the Commissioner may decide to permit such a hearing or may refuse the request for hearing. If the Commissioner refuses the request for hearing, the interested person may be heard at the hearing held by the Board to consider the application. In the absence of a request, the Commissioner may order a hearing to be held before the Commissioner if the Commissioner determines that it is in the public interest.

SECTION 8. AMENDATORY 6 O.S. 2001, Section 308, is amended to read as follows:

Section 308. A. Notice. When a hearing is ~~ordered by~~ permitted before the Commissioner, the Commissioner shall notify interested persons of the date, time and place at which an opportunity to be heard shall be afforded. Interested persons shall include the applicant, the persons requesting a hearing and other

persons who have submitted written comments and objections to the Commissioner.

B. Participation in the hearing. Within ten (10) days after the date of notice of hearing, each person desiring to be heard shall notify the Commissioner of such person's intention to participate in the hearing. At least five (5) days prior to the hearing, each participant shall submit to the Commissioner and the applicant a list of witnesses and copies of each exhibit to be offered as the Commissioner may require. Any participant who fails to comply with these deadlines shall be prohibited from participation in the hearing.

C. Presiding officer. The presiding officer at the hearing shall be the Commissioner or the designee of the Commissioner. The presiding officer shall have the authority to appoint a panel to assist the presiding officer.

D. Order of presentation.

1. Opening statements. The applicant and each other participant shall make an opening statement. The length of such statements shall be within the discretion of the presiding officer.

2. Applicant's presentation. Following the opening statements, the applicant shall present any data and materials, oral or documentary of the applicant.

3. Other presentations. Following the applicant's presentation, other interested persons may present their views with respect to the application under consideration.

4. Summary statements. After all the above presentations have been concluded, the participants may make short and concise summary statements reviewing their positions.

E. Witnesses. The obtaining of witnesses is the responsibility of the participants. All witnesses will be present of their own volition, but any person appearing as a witness may be subject to questioning by any participant, by the presiding officer or by any

member of the panel. The refusal of a witness to answer questions may be considered by the presiding officer in determining the weight to be accorded the testimony of that witness. Witnesses shall not be sworn.

F. Evidence. The presiding officer shall have the authority to exclude witnesses, evidence, data or materials which the presiding officer deems to be improper, irrelevant, or duplicitous. Formal rules of evidence shall not be applicable to these hearings.

Documentary material must be of a size consistent with ease of handling, transportation and filing, and must be provided for each participant by the party presenting such evidence. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size for submission as evidence. Ten copies of all such documentary evidence shall be furnished to the Commissioner.

G. Procedural questions. The presiding officer or any designated member of the assisting panel shall determine all procedural questions. The Commissioner and the presiding officer shall each have the authority to limit the number of witnesses to be called by each participant and to impose such time limitations as they shall deem reasonable.

H. Transcript. A transcript of each hearing shall be made. The Commissioner's office shall arrange for a court reporter to be present to record the proceedings. All expenses of the reporter, including the furnishing of two copies of the transcript to the Commissioner, shall be borne by the person or persons requesting the opportunity to be heard. In the event the Commissioner orders a hearing when no request is submitted, expenses shall be borne by the applicant.

I. The record. The record of these proceedings shall include the charter application file described in Section 309 of this title,

all documentary evidence presented at the hearing and the transcript.

SECTION 9. AMENDATORY 6 O.S. 2001, Section 309, is amended to read as follows:

Section 309. A. Contents. The charter application file shall consist of the application with supporting data and supplementary information, with the exception of personal financial records of individual applicants and other material deemed by the Commissioner to be confidential. In addition, the charter application file shall contain all data and information submitted by interested persons in opposition to such application.

B. Availability of charter application file. ~~The~~ Except for personal financial records of individual applicants and other material deemed by the Commissioner to be confidential, the charter application file shall be available for inspection in the office of the Banking Department upon written request from any person. No documents in the charter application file may be removed from the office of the Banking Department. Photocopies may be made upon request. The charge for such copies shall be determined by the Commissioner.

C. Findings and conclusions. The presiding officer shall issue findings of fact and conclusions of law within thirty (30) days after the hearing or additional time as prescribed by the presiding officer based on the material contained in the record and shall mail a copy of the findings and conclusions to each participant. The presiding officer, at the discretion of the presiding officer, may give consideration to the following in arriving at the findings, conclusions and recommendation of the presiding officer:

1. The character, financial responsibility and business experience of the organizers and proposed directors;

2. The adequacy of the existing banking facilities in the proposed market;

3. The economic and competitive conditions in the proposed market;

4. The likelihood of successful operation of the proposed institution;

5. The adequacy of initial capital, proposed earnings and deposit prospects of the proposed institution; and

6. Negative impact on banks serving all or part of proposed market.

D. Objections; Board hearing. Written objections to the presiding officer's findings and conclusions, or procedural objections, if any, shall be submitted to the Commissioner by participants within fourteen (14) days after the issuance of the presiding officer's findings and conclusions. The Commissioner shall schedule a date for consideration of the presiding officer's findings of fact and conclusions of law and recommendations by the Board and for presentation of oral arguments by participants in support of or in opposition to the written objections previously submitted.

The Commissioner shall promptly notify all participants of the date scheduled for hearing before the Board.

SECTION 10. AMENDATORY 6 O.S. 2001, Section 310, is amended to read as follows:

Section 310. A. Board hearing. ~~In its consideration of the presiding officer's findings of fact and conclusions of law and recommendations~~ The Board shall consider all applications for authority to organize a state bank or trust company. If the Commissioner has granted an earlier hearing on the application, the Board shall review the record transcript of the proceedings, including the findings of fact and conclusions of law of the presiding officer. The Board may hear oral argument in support of and in opposition to the written objections, if any, and shall adopt, reject or remand the findings, conclusions and recommendation

of the presiding officer. The Board shall adopt the presiding officer's findings, conclusions and recommendation unless it finds the presiding officer's findings, conclusions and recommendation are not supported by the record. Remand may be for the sole purpose of the presiding officer taking additional evidence from the participants. Any such remand shall specifically identify the scope and nature of additional evidence sought by the Board. Proceedings on remand shall be conducted within the time limits set by the Board in the manner as prescribed by the presiding officer.

The Board may adopt, reject or modify any finding of fact not supported by the record. The Board may adopt or reject any conclusion of law. The Board may enter such additional findings of fact that it deems necessary or appropriate and which is supported by the record.

In the absence of a hearing granted before the Commissioner, the Board may adopt its own findings of fact and conclusions of law with respect to the approval or disapproval of the application. If the applicant or any interested party desires to obtain a transcript of the proceedings before the Board, such person shall notify the Commissioner in writing within ten (10) days of the Board's hearing and must arrange for a court reporter to be present at the hearing. All expenses of the reporter, including the furnishing of two copies of the transcript to the Commissioner, shall be borne by the person or persons arranging for the reporter. In the event the Board requests a reporter to be present, expenses shall be borne by the applicant.

B. Condition. Approval of an application for authority to organize a state bank shall be contingent upon the proposed bank making a bona fide application for Federal Deposit Insurance or for membership in the Federal Reserve System.

C. Approval of an application. ~~Approval of an application shall occur upon the Board adopting the presiding officer's~~

~~recommendation for approval of the application or upon the Board rejecting the presiding officer's recommendation for disapproval of the application. Disapproval of an application shall occur upon the Board adopting the presiding officer's recommendation for disapproval of the application or upon the Board rejecting the presiding officer's recommendation for approval of the application~~  
When approving or disapproving an application for authority to organize a state bank or trust company, the Board may accept or reject any findings of fact or conclusions of law reached in an earlier hearing before the Commissioner, or may approve or disapprove the application based on its own findings of fact and conclusions of law. The Board must provide written findings of fact and conclusions of law only when required by the provisions of the Oklahoma Administrative Procedures Act.

D. Notice. Within ten (10) days after approval or disapproval of the application by the Board, the Commissioner shall provide notice to all interested persons.

SECTION 11. AMENDATORY 6 O.S. 2001, Section 311.1, is amended to read as follows:

Section 311.1 In the case of an existing certificate of incorporation for which no certificate of ~~authority~~ incorporation is currently outstanding, a holder of such certificate of authority shall follow the procedure and obtain the approvals as set forth in Sections 312 and 313 of ~~Title 6 of the Oklahoma Statutes~~ this title.

SECTION 12. AMENDATORY 6 O.S. 2001, Section 312, is amended to read as follows:

Section 312. Within ninety (90) days after approval by the Board of an application for authority to organize or any additional period allowed by the Commissioner:

1. ~~Certificate~~ The proposed certificate of incorporation submitted to the Commissioner with the application for authority to organize shall be signed under oath by each of the organizers and



submitted in duplicate to the Commissioner. A copy thereof, duly approved by the Commissioner, shall be filed with the Secretary of State by the applicant. The Secretary of State shall issue a certificate in the form provided by law for other corporations and the existence of such bank or trust company shall date from the issuance of the certificate of the Secretary of State; provided, it shall be a criminal offense against this Code for a state bank or trust company to perform any act other than to perfect its organization, obtain and equip a place of business and otherwise prepare to do business before receiving a certificate of authority to operate issued to it by the Commissioner;

2. After the certificate of incorporation is received from the Secretary of State, a meeting of the shareholders shall be held to elect directors and adopt the bylaws. The bylaws adopted may be amended by majority vote of the outstanding voting shares and the bylaws may provide for amendment by the board of directors of any provision other than those relating to the duties, term of office, remuneration, reimbursement or indemnification of a director, and no share shall be issued until the bank's capital has been paid in full; and

3. After the first meeting of the shareholders and the board of directors, the president, secretary or cashier shall file with the Commissioner a verified application for certificate of authority.

The application shall contain:

- a. a statement as to the ~~manner in which the capital shall be paid in~~ amount of capital which the bank has collected from subscribers to the bank's stock,
- b. the name, address and business and professional affiliations of each director and executive officer,
- c. evidence of the character, financial responsibility and ability of the managing officer,

- d. the name and address of each shareholder and the number of shares held by each,
- e. the address at which the bank or trust company will operate,
- f. a statement that all of the bylaws adopted were attached as an exhibit to the application for authority to organize,
- g. if a bank, a statement that an application for Federal Deposit Insurance or for membership in the Federal Reserve System has been approved, and
- h. such other information as the Commissioner may require to enable the Commissioner to determine whether a certificate of authority should be issued.

SECTION 13. AMENDATORY 6 O.S. 2001, Section 313, is amended to read as follows:

Section 313. A. If the application for a certificate of authority or any accompanying documents do not comply with the requirements of this Code, the Commissioner shall, within twenty (20) days after the receipt thereof, return them to the applicant, calling attention to the defect or defects therein. If the application and accompanying documents are not so returned within such twenty-day period they shall be deemed to have been accepted for filing by the Commissioner.

B. The Commissioner shall approve or deny the application for a certificate of authority within sixty (60) days after such application has been accepted. The Commissioner shall approve the application if:

1. The Board shall have approved the managing officer;
2. The capital in the amounts set forth in the application has been fully paid;
3. Bylaws attached to the application have been adopted;

4. Any conditions imposed by the Board or the Commissioner in approving the application for authority to organize have been fulfilled; and

5. The requirements of this Code have been satisfied; provided, the Commissioner with the consent of the Board may deny the application for a certificate of authority if the bank's application for Federal Deposit Insurance or for membership in the Federal Reserve System has not been approved.

C. If the Commissioner approves such application, the Commissioner shall within twenty (20) days of such action issue a certificate of authority and shall provide the same to the corporation. If the Commissioner denies the application the Commissioner shall, within twenty (20) days of such action, mail a notice of the denial to the corporation, stating therein the reason or reasons for the denial.

D. If the requirements of Section 312 of this title have not been met within the time therein provided, or if the application for certificate of authority has been denied by the Commissioner, or if no certificate of authority exists for a period of six (6) months after the date of the Board's approval of the application for authority to organize for any bank or trust company, or if the bank or trust company shall fail to commence business within six (6) months after the issuance by the Commissioner of the certificate of authority, or any additional period allowed by the Commissioner, the Commissioner shall cancel the certificate of authority, revoke all banking and trust powers and recommend to the Secretary of State cancellation of the certificate of incorporation. Upon receipt of such recommendation, the Secretary of State shall cancel the certificate of incorporation and the bank or trust company shall be liquidated in accordance with the order of the Commissioner. If an improper expenditure has been made, the Commissioner may order the

persons who were organizers or directors at the time to restore the same by equal contributions.

SECTION 14. AMENDATORY 6 O.S. 2001, Section 710, is amended to read as follows:

Section 710. A. Stockholders' meetings.

1. An annual meeting of shareholders shall be held for the election of directors on a date and at a time designated by or in the manner provided for in the bylaws. Any other proper business may be transacted at the annual meeting.

Additional meetings shall be held as may be provided in the bylaws.

2. Notice shall be mailed at least ten (10) days before a meeting to every person who was a stockholder of record twenty (20) days before the date of the meeting or at such longer period as may be provided in the bylaws. Such notice shall be mailed to the stockholder's address on the records of the bank. No business shall be transacted at a special meeting which is not specified in the notice thereof or necessary or proper in connection with, or incidental to, the business specified.

3. If any meeting of the shareholders be adjourned to another time or place, no notice as to such adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken, unless otherwise provided in the bylaws; provided, however, that in the event such meeting be adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

4. Notice of the time, place and purpose of any meeting of shareholders, whether required by this Code, by the certificate of incorporation, or by the bylaws, may be waived in writing by any shareholder or by the attendance of the shareholder at such meeting. Such waiver may be given before or after the meeting, and shall be filed with the secretary or entered upon the records of the meeting.

5. The holders of a majority of the outstanding voting shares, or their authorized representatives, shall constitute a quorum. In the absence of a quorum, a meeting may be adjourned from time to time without notice to the stockholders.

B. Voting - Cumulative voting - Bank or trust company may not vote own shares - Exceptions. Except on the election of directors, when cumulative voting is provided for in the certificate of incorporation or as ~~they~~ it may be amended, each share of common stock shall have one vote which may be cast by the owner of record on the record date, or the proxy of the owner, whether or not the owner of record has the beneficial interest therein. The bank or trust company may not vote shares which it holds in any capacity other than as fiduciary.

C. Proxies. Each shareholder entitled to vote at a meeting of shareholders or to express consent or dissent to corporation action in writing without a meeting may authorize another person or persons to act for the shareholder by written proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

D. Voting trust - Board approval required. No shares deposited under a voting trust agreement shall be voted by the trustee unless the agreement has been approved by the Board. Approval shall be withheld, or, if previously granted, revoked whenever it appears that the existence of the trust would tend to reduce competition among lending institutions or to affect adversely the character or competence of the management or the bank's policies or operating procedures. In the absence of such approval, the record owner may vote the owner's share. No shares held by a licensed securities broker, or by any person, firm or corporation acting for such broker or who is an owner, employee, associate shareholder or partner of a licensed securities broker, shall be directly or indirectly voted

unless the bank's bylaws expressly authorized the voting of such broker held shares.

E. Preemptive rights of shareholders. All voting shares of capital stock of any bank or trust company shall vest preemptive rights to subscribe for any additional shares or any obligations convertible into shares to be allotted or used by such bank or trust company unless specifically negated by the original certificate of incorporation or unless the rights have been specifically waived at the time of authorization of new offering. Any amendment to the certificate of incorporation to remove preemptive rights must be made pursuant to unanimous approval by the shareholders of the bank. The preemptive rights of ~~stockholders~~ shareholders shall not extend to fractional shares.

F. Examination of stockbook. The stockbook and the minutes of stockholders' meeting shall be available for examination by a stockholder of the corporation at the principal place of business during business hours.

SECTION 15. AMENDATORY 6 O.S. 2001, Section 806, is amended to read as follows:

Section 806. A. A bank may purchase and sell equity and investment securities without recourse, solely on the order and for the account of a customer, and may not underwrite an issue of securities except as otherwise provided by the Banking Code or rules adopted thereunder.

B. Except as otherwise provided by the Banking Code or rules adopted thereunder, a bank may not invest its funds in equity securities except as necessary to avoid or minimize a loss on a loan or investment previously made in good faith.

C. A bank may purchase investment securities for its own account under limitations and restrictions prescribed by rules adopted under the Banking Code. Except as otherwise provided by this section, the total amount of the investment securities of any

one obligor or maker, held by the bank for its own account, may not exceed an amount equal to thirty percent (30%) of the bank's capital using data from the most recent quarterly report of condition of the bank or trust company.

D. With the approval of the Commissioner, a bank may establish and capitalize one or more operating subsidiaries and financial subsidiaries, subject to rules promulgated by the Board.

E. Notwithstanding subsection A, B or C of this section, a bank may, with prudent banking judgment, deal in, underwrite, or purchase for its own account, without limitation as to amount unless otherwise indicated in this subsection:

1. Bonds and other legally created general obligations of a state, an agency or political subdivision of a state, the United States, or an agency or instrumentality of the United States;

2. An investment security that this state, an agency or political subdivision of this state, the United States, or an agency or instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;

3. Investment securities (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of Section 142(b)(1) of the United States Internal Revenue Code) issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of one or more states, or any public agency or authority of any state or political subdivision of a state, if the bank is well capitalized (as defined in 12 U.S.C., Section 1831o);

4. Investment securities issued under the authority of the Federal Farm Loan Act;

5. Investment securities insured by the Secretary of Housing and Urban Development under Title IX of the National Housing Act or investment securities insured by the Secretary of Housing and Urban Development pursuant to Section 207 of the National Housing Act, if

the investment securities to be issued in payment of the insured obligations are guaranteed as to principal and interest by the United States;

6. Securities that are offered and sold under 15 U.S.C., Section 77d(5);

~~4.~~ 7. Mortgage-related securities, as defined by 15 U.S.C., Section 78c(a), except that notwithstanding Section 347 of the Riegle Community Development and Regulatory Improvement Act of 1994, a note or obligation that is secured by a first lien on one or more parcels of real estate on which is located one or more commercial structures shall be subject to the limitations of subsection C of this section;

~~5.~~ 8. Investment securities issued or guaranteed by the Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Agriculture Mortgage Association, or the Federal Farm Credit Banks Funding Corporation;

9. Purchase and hold for its own account shares of stock of small business investment companies in an aggregate amount not exceeding five percent (5%) of the capital stock and surplus of the bank, and receive and retain the benefits of the stock ownership, including stock dividends;

~~6.~~ 10. Purchase and hold for its own account shares of stock of a banker's bank set forth in Section ~~37 of this act~~ 402.1 of this title, but in no event shall the total amount of the stock held by the bank exceed ten percent (10%) of the capital of the bank and in no event shall the purchase of the stock result in the bank acquiring more than five percent (5%) of any class of voting securities of the bank of the banker; and

~~7.~~ 11. Stock of a Federal Home Loan Bank.

F. Mutual Funds.



1. A bank may invest for its own account in equity securities of an investment company registered under the Investment Company Act of 1940 and the Securities Act of 1933 if the portfolio of the investment company consists wholly of investments in which the bank could invest directly for its own account.

2. If the portfolio of an investment company described by paragraph 1 of this subsection consists wholly of investments in which the bank could invest directly without limitation under subsection E of this section, the bank may invest in the investment company without limitation.

3. If the portfolio of an investment company described by subsection C of this section contains an investment or obligation that is subject to the limits of Section 802 of this title, the bank may invest in the investment company not more than an amount equal to thirty percent (30%) of the bank's capital.

4. A bank that invests in an investment company as provided by this section shall periodically determine that its pro rata share of any security in the portfolio of the investment company is not in excess of applicable investment and lending limits by reason of being combined with the bank's pro rata share of that security held by all other investment companies in which the bank has invested and with the bank's own direct investment and loan holdings.

G. Other Limitations.

~~1. In no event shall the total amount of securities of any one obligor or maker held by the bank for its own account exceed at any time thirty percent (30%) of the capital of the bank or trust company. This limitation shall not apply to securities described and set forth in paragraphs 1, 2 and 3 of subsection E of this section.~~

~~2. A bank may not purchase for its own account, in any amount, paving, sewer or other special improvement obligations that are payable from the proceeds of special assessments.~~

H. Assets shall not be carried above cost. With the exception of securities held by the bank for sale, no bank or trust company shall, except with the previous written consent of the Commissioner, enter or at any time carry on its books any of its assets at a valuation exceeding the actual cost to the bank or trust company.

SECTION 16. AMENDATORY 6 O.S. 2001, Section 1004, is amended to read as follows:

Section 1004. A. Deposit requirement - As pledge for faithful performance.

(1) Before any bank or trust company, including national banking associations, shall transact any ~~trust~~ fiduciary business within this state it shall deposit with the Commissioner, as security and as a pledge for the faithful performance of its duties as a trust company, cash or interest-bearing securities, which securities shall have a ready market value in an amount regulated by the amount of cash and securities held in trust by the bank or trust company.

(2) Whenever such cash and securities held in trust amount to less than One Million Dollars (\$1,000,000.00), the deposit shall be Fifty Thousand Dollars (\$50,000.00). Whenever such cash and securities held in trust amount to One Million Dollars (\$1,000,000.00) but do not exceed ~~One Million Five Hundred Thousand Dollars (\$1,500,000.00)~~ Five Million Dollars (\$5,000,000.00), the deposit shall be ~~One Hundred Thousand Dollars (\$100,000.00)~~ Two Hundred Fifty Thousand Dollars (\$250,000.00). ~~For each Five Hundred Thousand Dollars (\$500,000.00) or fraction thereof in excess of One Million Five Hundred Thousand Dollars (\$1,500,000.00) so held in trust, the deposit shall be increased an additional Twenty-Five Thousand Dollars (\$25,000.00)~~ Whenever such cash and securities held in trust amount to Five Million Dollars (\$5,000,000.00) but do not exceed Ten Million Dollars (\$10,000,000.00), the deposit shall be Four Hundred Thousand Dollars (\$400,000.00). Whenever such cash and securities held in trust exceed Ten Million Dollars

(\$10,000,000.00), the deposit shall be Five Hundred Thousand Dollars  
(\$500,000.00); provided, no ~~bank or trust company shall be required~~  
~~to increase the deposit to an amount in excess of Five Hundred~~  
~~Thousand Dollars (\$500,000.00),~~ and no trust company not receiving  
deposits other than funds held by it in trust shall be required to  
increase the deposit to an amount in excess of its capital. The  
term "cash and securities held in trust" as employed herein shall  
not include lands held in trust as collateral security for monies  
lent or to be lent, nor to trust funds registered with the  
Securities and Exchange Commission under the Securities Act of 1933,  
as amended (48 Stat. 74, 15 U.S.C. Section 77 (1933)), and the  
Securities Exchange Act of 1934, as amended (48 stat. 881, 15 U.S.C.  
Section 78 (1934)).

B. Securities eligible for deposit. The securities mentioned  
in subsection A of this section (Section 1004) may be of the  
following classes and not otherwise:

(1) Interest-bearing bonds, notes or obligations of the United  
States, or those for which the faith of the United States is pledged  
for the payment of the principal and interest.

(2) Bonds or other obligations of the State of Oklahoma or any  
county of this state, or of any incorporated city, town or school or  
port district of this state having a population of not less than two  
thousand (2,000) inhabitants as shown by the last federal census, or  
bonds of any other state of the United States, or any county,  
incorporated city, town or school district having a population of  
not less than twenty-five thousand (25,000) inhabitants, as shown by  
the last federal census, provided such bonds were issued in  
compliance with the constitution and laws of such state, and there  
has been no default in payment of either principal or interest on  
any of the general obligations of such state, county, incorporated  
town, city or school or port district for a period of five (5) years  
next preceding the date of the deposit, and such bonds are a general

obligation of the state, county, school or port district, city or town issuing the same.

(3) Bonds, other than foreign bonds, listed on the New York Stock Exchange, provided the total obligation of any one debtor shall not exceed twenty percent (20%) of the aggregate deposit.

(4) Notes or bonds secured by first lien upon improved real estate in the State of Oklahoma. Such loans may be subsequent to taxes not due and bonded indebtedness for public improvements not due, but any such obligation, plus taxes not due and bonded indebtedness for public improvements not due, shall not exceed fifty percent (50%) of the reasonable market value of such real estate, except as provided in Section 1008 of this Code. There shall be filed by the bank or trust company in support of such real estate obligation such appraisal, evidence of merchantable title and insurance as may be required by the Commissioner.

C. Purchase of bond in lieu of deposit. As an alternative to the deposit and pledge of cash or securities pursuant to the provisions of this section, a bank or trust company may purchase a bond, payable to the Commissioner and to any person suffering a loss by reason of the malfeasance of the bank or trust company (a "Claimant"). The amount of the bond must be not less than twice the amount of the cash and securities which would otherwise be required to be pledged under paragraph (2) of subsection A of this section. The bond must be submitted to and approved by the Commissioner. The bond may be canceled only after thirty (30) days' prior written notice to the Commissioner and only after the bank or trust company has made a sufficient deposit of cash or securities under the terms of this section, or the company has been relieved of its fiduciary positions by transfer pursuant to the terms of Section 1109 of this title. Any bank or trust company that does not maintain a bond which complies with the terms of this subsection must make a deposit or pledge of securities pursuant to the terms of this section.

D. Primary liability for deposit. The deposit ~~mentioned in subsection A of~~ or bond required by this section (Section 1004) is shall be primarily liable for the malfeasance of a company as guardian, executor, administrator, assignee, receiver, trustee under inter vivos trust or trustee under will by an appointment of court, or depository of money in court, and is not liable for any debt or other obligation of the company until such malfeasance liability of the company has been discharged.

~~D.~~ E. Right of action against deposit or bond. Any person who suffers loss or damage because of the breach of any trust committed to any bank or trust company shall have a right of action to recover the amount of such loss or damage from the provisions of the bond or out of the moneys or securities deposited with the Commissioner by the trust company. However, the Commissioner shall not be required to release to a Claimant any amount deposited with the Commissioner or request payment of any amount under the terms of the bond except at the direction of an unappealable order of a court of competent jurisdiction issued in favor of the Claimant. If the amount for which the bank or trust company is liable exceeds the amount of the bond or deposit, all Claimants will receive a pro rata portion of the total bond or deposit based on the Claimant's percentage of the company's total liability.

~~E.~~ F. Charge for handling securities. The Commissioner may make such charges and assessments for expenses incurred, including insurance, and services rendered in connection with deposits of securities as he deems just and reasonable.

~~F.~~ G. Appraisal of real estate securing deposit. The Commissioner may appraise, or cause to be appraised, or may in lieu of his own appraisal accept the appraisal of qualified appraisers, every parcel of real estate securing any note or bond offered for deposit with the Commissioner. If the appraisement is made by the Commissioner he shall collect from the company offering the

mortgages for deposit his actual expenses in making the appraisal. If the appraisal is made by an appraiser selected by the Commissioner he shall collect a reasonable fee from the company.

~~G.~~ H. Certificates of title, title insurance, or title opinion on real estate securing deposit. The Commissioner may accept a certificate of title or guaranty of title or title insurance policy from a title insurance company, or the opinion of the attorney who examined the title to the property for the trust company offering a mortgage and note for deposit, or he may require an opinion as to title from the Attorney General.

~~H.~~ I. Fire insurance; deposit of documents with notes or bonds.

(1) Fire insurance shall be in effect upon all insurable property for the reasonable value thereof.

(2) All mortgages or deeds of trust and all insurance policies, abstracts of title (when required by the Commissioners), certificates of title, guaranty of title or title insurance policies and appraisements shall be deposited with the notes or bonds. When less than the whole of a bond issue is deposited, the Commissioner shall not require the deposit of the abstract of title, certificate of title, guaranty of title or title insurance policies and appraisements, but may require in lieu thereof a certificate from the trustee of the mortgage or bond issue that such documents have been deposited with the trustee.

~~I.~~ J. Substitution of deposit securities; income of securities deposited.

(1) The Commissioner may require the immediate substitution of other securities when he has reason to believe that the market value of securities which have heretofore been deposited have depreciated below their face value. Substitution of securities with the Commissioner at the request of the depositing bank or trust company may be permitted when approved by the Commissioner.

(2) So long as the depositing bank or trust company continues solvent it shall be permitted to receive and retain all interest, income or dividends from all securities deposited with the Commissioner.

~~J.~~ K. Return of deposit; liability of state.

(1) The State of Oklahoma is liable for the return of any funds or securities deposited in accordance with this section ~~(Section 1004)~~.

(2) The State of Oklahoma is responsible for the safe return of such securities deposited with the Commissioner under this Code.

SECTION 17. AMENDATORY 6 O.S. 2001, Section 1005, is amended to read as follows:

Section 1005. Banks having trust powers and trust companies of this state having deposited securities with the Commissioner or purchased a bond as provided in Section 1004 of this Code, and authorized to act as assignee, receiver, administrator, executor, guardian, trustee, or in any court appointed fiduciary capacity, shall not be required by any officer or court of this state to give security upon appointment to, or acceptance of, any office of trust which it is by law authorized to execute.

SECTION 18. This act shall become effective November 1, 2002.

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