

Title 23. Public Utilities and Regulated Industries
Chapter III. State Bank Department, Department of Commerce
Subchapter A. Generally
Part 320. State Bank Department Rules Generally
Subpart 1. [Reserved]

Subpart 2. State Bank Department — State Banking Board

23 CAR § 320-201. Fees for copies provided pursuant to request.

Copies of documents provided pursuant to request from the public or in the case of subpoena (if the copies are of confidential records) will be provided based upon the following fee schedule:

- (1) Regular copies, fifty cents (50¢) per page;
- (2) Certified copies, one dollar (\$1.00) per page;
- (3) Microfilm copies, one dollar (\$1.00) per page; and
- (4) Faxed copies, fifty cents (50¢) per page extra.

Authority. Arkansas Code §§ 23-46-203, 23-46-205.

Codification Notes. This section was promulgated as Section 46-101.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-101)"

23 CAR § 320-202. Confidential or nonconfidential status of State Bank Department records.

(a)(1) The names of stockholders of a bank or bank holding company will not be regarded as confidential.

(2) The stockholder's list of a bank or bank holding company will not be regarded as confidential.

(b) Articles of agreement and incorporation and all amendments are not confidential.

(c) **Stock transfers.**

(1) A one-page request form submitted to the Bank Commissioner requesting a transfer of bank stock from one (1) stockholder to another.

(2) However, any information submitted to the commissioner, including any personal financial statements, along with the request will be regarded as confidential and is not subject to disclosure.

(d) **Applications.** All applications submitted to the commissioner may be disclosed to anyone with the exception that personal financial statements submitted in support of such applications shall be regarded as confidential and are not subject to disclosure.

(e) **Examination reports.**

(1) Examination reports are:

(A) Highly confidential; and

(B) Not subject to public disclosure.

(2) Such examination reports are regularly submitted to the federal regulatory authorities and/or other state financial institution regulatory authorities, as well as to the examined bank as a matter of regulatory process.

(3) However, the examination reports remain the property of the State Bank Department and, as such, the report, as well as all correspondence between regulatory authorities and the examined bank in respect to the examination report, is confidential, Arkansas Code § 23-46-101.

(f) **Investigation reports.**

(1) An investigation made by a bank examiner assigned to investigate the merits of an application, or other bank matter, is generally considered as confidential.

(2) The exception being that the commissioner, in his or her discretion, reserves the right to permit an investigation on the merits of an application to be reviewed by the applicant and an official protestant to an application and permit

introduction into evidence, by a party to the proceeding, those portions of the investigation which may be necessary and relevant to that proceeding.

(g) **Corporate file.**

(1) A bank's corporate file includes its:

- (A) Articles of incorporation;
- (B) Amendment to articles of incorporation;
- (C) List of stockholders;
- (D) Articles of merger; and
- (E) Other relevant documents.

(2) A bank's corporate file is subject to disclosure with the exception of any information in support of a petition for a stock transfer since such supportive information is confidential.

(h) **Financial statements.** Personal financial statements shall not be exhibited to the public.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 46-101.3 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-101)"

23 CAR § 320-203. Certified copies and certificates of good standing fees.

(a) Certified copies of records and papers furnished to an individual by the State Bank Department will be charged at a rate of one dollar (\$1.00) per page.

(b) Certificates of good standing provided by the department will be charged at fifty dollars (\$50.00) per certificate.

Authority. Arkansas Code §§ 23-46-203, 23-46-205.

Codification Notes. This section was promulgated as Section 46-203 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-203)"

23 CAR § 320-204. Interest in state banks, participation in.

State Bank Department employees, subject to Arkansas Code § 23-46-207, may be a depositor in any financial institution the department regulates and may participate in overdraft programs associated with such deposit relationships so long as participation in such programs are regularly offered as a customer service of the institution.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 46-207.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-207)"

Subpart 3. Proceedings Before the Board and Commissioner

23 CAR § 320-301. Applications.

(a) The Bank Commissioner and the State Banking Board rule that applications forms provided by the State Bank Department for various applications will request information required for submission of an application to the board or the commissioner.

(b) The board and the commissioner reserve the right to request additional information as necessary to consider an application.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 46-304.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-304)"

23 CAR § 320-302. Applications/documents.

The Bank Commissioner and the State Banking Board may permit applications and supporting documentation, or any other documents to be submitted to the State Bank Department in original paper document format, photographic format, or electronic format, which has been determined as acceptable by the commissioner.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 46-305.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-305)"

23 CAR § 320-303. Meetings of the board — Regular meeting dates.

(a)(1) Meetings of the State Banking Board will be held in offices of the State Bank Department, except in the case of meetings at which a large attendance is anticipated.

(2) In such a situation, the Bank Commissioner will arrange for a meeting in outside quarters where a larger space is available.

(b)(1) Regular meetings of the board may be scheduled four (4) times a year.

(2) These meetings will be held at 10:00 a.m. on the third Thursday of January, April, July, and October, but if, in the opinion of either the commissioner or chair of the board, any necessitous reason exists for changing the date of a regular meeting, either said commissioner or chair may reset the meeting for a different date after giving notice as required in this part for the call of a special meeting.

(c) All meetings are public except when the members meet in executive session as permitted under the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 46-402.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-402)"

23 CAR § 320-304. Publication requirements — Applications before the State Banking Board.

(a) Sponsors of the following applications must publish notice of the proposed application once a week for three (3) consecutive weeks in a newspaper of statewide circulation.

(b) The first publication shall be within ten (10) calendar days prior to the application's filing date.

(c) Publications must provide for a fifteen-day comment period beginning with the actual filing of the application.

(d) These applications are:

- (1) New state bank charters;
- (2) Merger or consolidation applications between one (1) or more banks, or saving and loan associations into a state bank;

(3) Purchase or assumption application (over fifty percent (50%) of the assets or liabilities) of another depository institution; and

(4) Change of a state bank's main banking office from one (1) municipality to another (simple or complex application).

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 46-403.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-403)"

23 CAR § 320-305. Application filing fees — Applications to be presented to the State Banking Board.

Following is a list of application filing fees:

- (1) New bank charter, eight thousand dollars (\$8,000);
 - (2) Merger applications (per institution), five thousand dollars (\$5,000);
 - (3) Conversion (national bank to state bank), eight thousand dollars (\$8,000);
 - (4) Conversion (stock savings and loan or federal savings bank to state bank), eight thousand dollars (\$8,000);
 - (5) Charter amendments, two hundred dollars (\$200);
 - (6) Charter amendments for trust powers, five hundred dollars (\$500);
 - (7) Purchase or assumption (over fifty percent (50%) of assets or liabilities of another depository institution), five thousand dollars (\$5,000);
 - (8) Relocation of main office (from one (1) municipality to another) (application does not include any reorganization or change of bank business plans – must be simple relocation of address only), two thousand five hundred dollars (\$2,500);
- and

(9) Reorganization and relocation of bank charter (complex application), six thousand five hundred dollars (\$6,500).

Authority. Arkansas Code §§ 23-46-205, 23-46-404, 23-46-509.

Codification Notes. This section was promulgated as Section 46-404.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-404)"

23 CAR § 320-306. Application filing fees — Applications that are not filed with the State Banking Board.

(a) New branch banking office (expedited branch application), Arkansas Code § 23-48-703, three hundred dollars (\$300).

(b) New branch banking office (standard branch application), Arkansas Code § 23-48-703, five hundred dollars (\$500).

(c) New branch banking office (mobile branch application), Arkansas Code § 23-48-703, three hundred dollars (\$300).

(d) Plan of exchange, five hundred dollars (\$500) (plus expenses of Bank Commissioner, does not include costs associated with appraisals of bank stock).

(e) Filing of fictitious name, twenty-five dollars (\$25.00).

(f) Filing of out-of-state bank/bank holding company, three hundred dollars (\$300).

(g) Change in control, five thousand dollars (\$5,000).

(h) Purchase or assumption (less than fifty percent (50%) of assets or liabilities), three hundred dollars (\$300).

(i) Registered agent for service of process, Arkansas Code § 23-48-327, twenty-five dollars (\$25.00).

Authority. Arkansas Code §§ 23-46-205, 23-46-404, 23-46-509.

Codification Notes. This section was promulgated as Section 46-404.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. 23-46-404)"

23 CAR § 320-307. Hearings — Filing fees for written/official protests.

(a) A filing fee of two thousand five hundred dollars (\$2,500) will be required to file an official protest for the following applications:

- (1) New bank charter;
- (2) Merger application;
- (3) Purchase or assumption (over fifty percent (50%) of assets or liabilities);
- (4) Conversion (national to state bank);
- (5) Conversion (stock savings and loan or federal savings bank to state bank);
- (6) Relocation of main office (from one (1) municipality to another) (simple application); and
- (7) Reorganization and relocation of bank charter (complex application).

(b) A filing fee of five hundred dollars (\$500) will be required to file an official protest for a new branch banking office application (standard branch application) (Arkansas Code § 23-48-703).

(c) A filing fee of three hundred dollars (\$300) will be required to file an official protest for the following applications:

- (1) Purchase or assumption (less than fifty percent (50%) of assets or liabilities);
- (2) New branch banking office application (expedited branch application), Arkansas Code § 23-48-703; and
- (3) New branch banking office application (mobile branch application), Arkansas Code § 23-48-703.

Authority. Arkansas Code §§ 23-46-205, 23-46-404, 23-46-509.

Codification Notes. This section was promulgated as Section 46-406.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-406)"

23 CAR § 320-308. Adjudicative hearings before the State Banking Board and/or the Bank Commissioner.

(a) The following rules shall apply to adjudicative hearings before the State Banking Board and/or the Bank Commissioner.

(b) **Public hearing at commissioner's discretion.** The commissioner at his or her discretion, regardless of whether any formal protest or letters of opposition were filed, may hold a hearing on an application.

(c) **Decision maker.**

(1) **Matters before the board.**

(A) When an adjudicative hearing is conducted before the board, the chair of the board will conduct the hearing.

(B) The board, collectively, will act as the decision maker.

(2) **Matters before the commissioner.**

(A) When an adjudicative hearing does not involve the board, the commissioner reserves the right to act as decision maker or have a decision maker appointed.

(B) In the event the commissioner decides to act as the decision maker, but is unable to conduct the hearing, a deputy commissioner will conduct the hearing.

(C) In the event the commissioner decides to have a decision maker appointed, a list of five (5) potential decision makers will accompany the notice of the hearing sent to the parties entitled to notice by mail.

(D) This list will be compiled by the commissioner.

(E) All parties will receive the same list of five (5) potential decision makers.

(F) Two (2) potential decision makers are to be chosen from the list and communicated by facsimile or hand delivery to the commissioner within two (2) business days of receipt.

(G) The commissioner may authorize an employee of the State Bank Department to be served in the event of hand delivery.

(H) The commissioner will then choose a decision maker to conduct the hearing from those potential decision makers submitted by the parties receiving notice by mail.

(I) The commissioner will choose a decision maker from those submitted, even if not all parties submit decision makers.

(J) If no parties submit potential decision makers to the commissioner, the commissioner will choose a decision maker from the original list sent with the notice.

(d) **Hearing procedures.** For the purpose of the actual hearing, the following rules will govern:

(1) The decision maker may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings;

(2) All objections must be made in a timely manner and stated on the record;

(3) Subject to terms and conditions prescribed by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and, upon request of the decision maker, may submit briefs and engage in oral argument;

(4) The decision maker is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly; and

(5) The hearing will be held in accordance with the Arkansas Administrative Procedure Act.

(e) **Order of proceedings.** The decision maker will conduct the hearing in the following manner:

(1) The decision maker will give an opening statement, briefly describing the nature of the proceedings;

(2) The parties are to be given the opportunity to present opening statements;

(3) The parties will be allowed to present their case in the sequence determined by the decision maker;

(4)(A) Each witness must be sworn or affirmed by the decision maker, or the court reporter, and be subject to examination and cross-examination as well as questioning by the decision maker.

(B) The decision maker may limit questioning in a manner consistent with the law; and

(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

(f) **Court reporter.**

(1) In the event of a hearing before the board and/or the commissioner, the department will arrange for a court reporter to be present for the hearing.

(2) The applicant will be responsible for paying:

(A) The costs of the court reporter appearing at the hearing; and

(B) For copies of the transcript.

(3) The applicant will provide a copy of the transcript, free of charge, to the department.

(g) **Order of decision maker.**

(1) The decision maker will issue:

(A) An oral ruling at the conclusion of the hearing; or

(B) A letter opinion within a reasonable time after the conclusion of the hearing.

(2) The prevailing party will then have ten (10) days from the date of the oral ruling or letter opinion to prepare and submit a written order to the commissioner and the opposing party or parties.

(3) Upon receipt of the written order by the commission, the opposing party or parties will then have ten (10) days to object to the form or precedent.

(h) **Expiration of approval.**

(1) The decision maker's order approving an application shall expire eighteen (18) months from the date of the approval.

(2) Upon written request, the commissioner may approve an extension of the eighteen (18) months.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 46-406.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-406)"

23 CAR § 320-309. Rehearing modifications.

The State Banking Board and the Bank Commissioner take the position that until the findings of fact, conclusions of law, and written decision have been served on the parties, the board has the power to reverse, modify, or rehear a decision formerly reached.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 46-407.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-406)"

23 CAR § 320-310. Assessment fees.

(a) The State Banking Board and the Bank Commissioner require that assessment fees payable on a semi-annual basis to the State Bank Department be remitted by automated processing as established by the commissioner.

(b) Exceptions for payment of assessment fees by any other method than the automated method established by the department must be upon prior request and approval by the commissioner.

(c) Exception requests will only be approved on an extraordinary basis.

Authority. Arkansas Code §§ 23-46-205, 23-46-509.

Codification Notes. This section was promulgated as Section 46-509.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-509)"

23 CAR § 320-311. Bank retention of records.

(a) Arkansas state banks are required to maintain the following records permanently:

- (1) Minute books of meeting of stockholders and directors; and
- (2) Capital stock ledger and capital stock certificate ledger or stocks.

(b) All records, other than those described in subdivisions (a)(1) and (2) of this section shall be retained as follows:

Examination reports.....	permanent
Call reports.....	permanent
General ledger.....	permanent
Accounts payable.....	7 years

GENERAL

Customer relationship contract, after closing

Signature cards.....	10 years
Loan applications - Consumer.....	25 months
Loan applications – Business.....	12 months
Overdraft loan agreement.....	6 years
Safe deposit agreement.....	10 years
Night depository agreement.....	1 year

Financial activity records

Deposit tickets.....	10 years
Buy/sell orders for securities (after maturity).....	3 years
Withdrawal receipts.....	10 years
Cash letters.....	1 year
Stop payment orders.....	6 years
Safekeeping receipts.....	7 years
Wire transfer receipts.....	6 years
Safe deposit access records.....	7 years

Accounting records of financial activity

Transaction journal.....	7 years
Note and discount register.....	10 years
Draft register.....	10 years
Dividend Checks.....	10 years

Reconciliation record of account activity

Customer statements.....	6 years
Checks paid.....	7 years

Supporting and specialized documentation

Collateral records or receipts.....	10 years
Amortization records.....	to maturity
Credit files.....	6 years

Account analysis records.....	3 years
Proof sheets.....	3 years
Overdrafts.....	4 years
Trial balance.....	4 years
Return or exception items.....	5 years
Transit letters.....	3 years
1099 forms.....	5 years

DEPOSITS

Evidence of compliance with Electronic Funds Transfer Act.....	2 years
Currency transactions over \$10,000 reports.....	5 years
Exemption reports and written statements for currency Transactions over \$10,000, after removal from exemption list..	5 years
Taxpayer identification records for certificates of deposit, After redemption.....	6 years
Signature cards for deposit accounts verifying identity of signer	10 years
Statements or ledger cards for deposit accounts.....	6 years
Checks, drafts, and money orders over \$100 except for accounts Which average 100 checks per month and fall into one of these Categories; payroll, dividend, employee benefit, insurance claims, Medical benefits, government agency, brokers or dealers in Securities, fiduciary accounts, pension or annuity checks, and	
Checks drawn on other financial institutions.....	6 years
Certificates of deposit records, purchased.....	5 years
Certificates of deposit records, redeemed.....	10 years
Deposit slips or credit tickets for transactions over \$100 that identify amount of currency transacted.....	10 years

LOANS GENERAL

Credit extension records for transactions over \$10,000, excluding real estate required by the Bank Secrecy Act (formerly \$5,000)..... 5 years

COMMERCIAL

Standby letters of credit records (Regulation H)..... Not specified

INSTALLMENT/CONSUMER

Credit evaluations required by Equal Credit Opportunity Act and Regulation B, after notification or final disposition

Consumer..... 25 months

Business..... 12 months

Evidence of Compliance with Consumer Credit Protection Act

Title IX for EFTS services.....Until final disposition

Evidence of compliance with Truth in Lending requirements (Regulation Z), after disclosure.....3 years

INVESTMENTS

Municipal securities deal transactions records. Forms MSD4 and Forms MSD5 (Regulation H), after disclosure.....3 years

Broker/deal transactions and commission records, customer account records and related correspondence..... 3 years

Credit information relating to public and investment securities..... 3 years

Records of lost or stolen securities..... 3 years

Transaction records for brokers and dealers extending

credit (Regulation T)..... 3 years

TRUST

Fiduciary records, after termination of account or settlement of litigation..... permanent

Investments of each trust account shall be kept separate from the assets of the bank..... 10 years

OTHER RECORDS NOT SPECIFIED..... 6 years

(c) All records as noted in the Arkansas Banking Code of 1997, may be retained by photographic or other reproduction methods in lieu of retention of original records.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 46-511.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-46-511)"

The Arkansas Banking Code of 1997 is codified as Arkansas Code §§ 23-45-101 et seq., 23-46-101 et seq., 23-47-101 et seq., 23-48-101 et seq., 23-49-101 et seq., and 23-50-101 et seq.

Subpart 4. General Powers of Banks

23 CAR § 320-401. Warehousing mortgages and other loans.

(a) Arkansas Code § 23-47-101(a)(14) permits state banks "To warehouse or act as agent in warehousing mortgages and other loans".

(b) The aggregate of mortgages or other loans shall not be applied against the legal lending limit if the state bank is acting as agent in warehousing mortgages or other loans for a subsidiary.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-101.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-101)"

23 CAR § 320-402. Incidental powers.

(a) Arkansas Code § 23-47-101(b) reads: "In addition to the foregoing, a state bank may exercise any other powers which are incidental to the business of banking."

(b) This statutory reference to incidental powers is very similar to the National Banking Act.

(c) The Bank Commissioner and the State Banking Board may give consideration to the interpretations of similar words in the National Bank Act by the United States Comptroller of the Currency, but shall not utilize this section to permit the exercise of any power or performance of any activity that is beyond the reasonable progression of the business of banking as authorized in the Arkansas Code.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-101.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. 23-47-101)"

23 CAR § 320-403. Gift card disclosures.

The State Banking Board, pursuant to the Fair Gift Card Act, Arkansas Code § 4-88-701 et seq., adopts the following guidance on disclosure and marketing issues for the sale of gift cards issued by the United States Office of the Comptroller of the Currency, August 14, 2006:

PURPOSE AND SCOPE

This bulletin is intended to provide guidance to national banks on a number of disclosure and marketing issues presented by gift cards, so that national banks that issue gift cards do so in a manner in which both purchasers and recipients of gift cards are fully informed of the terms and conditions of the product.¹

BACKGROUND

A gift card is a type of prepaid or stored value card that is designed to be purchased by one consumer (purchaser) and presented as a gift to a second consumer (recipient).² The terms and conditions of different gift card products can vary significantly, but gift cards are generally divided into two main categories: retail gift cards and bank-issued gift cards. A retail gift card is typically offered by a major retail, entertainment, or food service company, to be used at establishments owned and operated by that company. A bank-issued gift card is typically issued by a financial institution, carries the logo of a payment card network such as VISA, MasterCard, or American Express, and can be used at the various locations that accept cards from that network.³

A bank-issued gift card is typically a bank product, and not merely an arrangement through which a third party can facilitate the use of its product in a payment card network. When a gift card is a bank product, the consumer's agreement is with the bank, and the gift card and the related disclosures, the cardholder agreement, and other documentation will specifically identify the bank as the issuer of the card. In addition, the bank generally will establish and impose the fees and other terms associated with the card and control the net proceeds of such fees; will be the party with the financial responsibility to merchants that honor the card; and will hold for its own account, or for the account of the consumer, the pool of funds used to pay merchants when consumers present gift cards to pay for goods or services.⁴

Industry studies and media reports suggest that the gift card market is growing rapidly, and will continue to do so over the next several years. This rapid growth – together with the diversity of fees and other terms and conditions among different gift card products – shows that it is important for national banks that offer these products to adopt sound disclosure practices to help ensure that consumers understand the gift card products they are purchasing and using.

CONSUMER DISCLOSURES

Because the purchaser and the recipient of a gift card typically are not the same person, gift cards present unique disclosure challenges. In particular, providing disclosures to a gift card purchaser may not be sufficient to avoid compliance and reputation risks related to misunderstanding by a recipient about material costs, terms, and conditions of the gift card. In these circumstances, the OCC expects national bank gift card issuers to take appropriate actions to ensure that critical information is provided in a form that is likely to be readily

available to recipients, as well as purchasers, of gift cards. Accordingly, with respect to gift cards that are bank products, the OCC would expect to see the following disclosures:

- Disclosures on Gift Cards. Basic information that is most essential to a gift card recipient's decisions about when and how to use the card should be provided on the gift card itself, or on a sticker or tape affixed to the gift card. In light of the terms and provisions of most bank gift cards, this information generally will include disclosures relating to the following matters:

The expiration date of the card (which, consistent with existing practices for credit and debit cards, should be presented clearly on the front of the card);

The amount or the existence of any monthly maintenance, dormancy, usage, or similar fees; and

How consumers may obtain additional information about their cards or other customer service (for example, by providing a toll-free number or Website address).

- Disclosures Accompanying Gift Cards. Other information that is important to a gift card recipient's decisions and actions should be provided in a form that is designed to be passed on with the card to the recipient, and issuers should encourage card purchasers to provide this information to gift card recipients. For example, the card could be carried in promotional packaging that contains this material information, or inserted into a sleeve that sets forth or is attached to these disclosures. Depending on the terms of the gift card product, this information may include:

The name of the bank that issued the card;

Any other fees that may apply to the card, including card replacement or reissuance fees, balance inquiry fees, foreign currency

conversion fees, and cash redemption fees, and how they will be collected (for example, by debits to the card balance);

Whether and how consumers can receive a replacement card in the event that their card is lost or stolen, the information that consumers need to retain in order to do so, and responsibility for unauthorized transactions;

Where the card can be used, including, if applicable, suggestions for using the card at gas stations, hotels, restaurants, or other locations that may seek payment authorization in an amount greater than the consumer's actual purchase;

The issuer's obligation to authorize transactions through use of the card, and examples of the circumstances under which it may refuse to do so;

The importance of tracking the balance remaining on the card;⁵

Whether, and if so, how the card may be used in "split payment" transactions (when the card is used in conjunction with another form of payment) and the process for redeeming de minimis remaining balances;

How consumers can resolve problems and complaints and receive balance and other information about their cards; and

When applicable, the issuer's ability to revoke or change the terms of the gift card agreement.

PRACTICES TO AVOID

National bank gift card issuers should take appropriate steps to avoid engaging in marketing or promotional practices that could mislead a reasonable consumer about the terms, conditions, or limitations of the bank gift card product they are offering. For example, issuers should not advertise a gift card as having "no expiration date" if monthly service or maintenance fees, dormancy fees, or similar charges can consume the card balance and thereby have the same practical effect as an expiration

date. Similarly, if such fees may consume the card balance before the stated expiration date for the card arrives, disclosures relating to that expiration date (other than the disclosure on the front of the card) should explain that possibility. Issuers also should generally avoid describing gift card products in terms suggesting that they are similar to gift certificates or other payment instruments with which consumers may be more familiar, or as products that carry federal deposit insurance when such insurance does not apply.

¹ This bulletin is limited to particular disclosure matters relating to bank-issued gift cards. It does not address other supervisory issues relating to these products or to other types of “prepaid” or “stored value” card products.

² In this regard, gift cards differ from payroll cards, travel expense cards, and other types of prepaid card products that are not designed to be marketed as a gift from one consumer to another.

³ As in the case of credit cards, bank-issued gift cards may be co-branded and offered through, or jointly with, a retailer or other company such as a retail shopping mall, but these cards generally have the same broad acceptability as other bank cards.

⁴ In connection with the gift card, the bank would be subject to the prohibition against unfair or deceptive acts or practices in the Federal Trade Commission Act, 15 USC 45(a)(1), and to all other requirements applicable to bank products.

⁵ Some gift card issuers provide a simple chart, similar to a checking account register, for gift card recipients to use to track their purchases and remaining balances.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-101.2(a) of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference OCC Bulletin 2006-34)."

23 CAR § 320-404. Wild card statute.

(a) Pursuant to the power granted to the Bank Commissioner by Arkansas Code § 23-47-101(c), the commissioner, by written order, may authorize state banks to engage in any banking activity then permitted to national banks.

(b) Such authority may be subject to such conditions and restrictions as the commissioner may determine to be appropriate, whether or not any such conditions or restrictions are applicable to national banks.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-101.3 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-101)"

23 CAR § 320-405. Disposition of income from the sale of credit life insurance or debt cancellation contracts.

(a)(1) Individual employees, officers, directors, and principal shareholders of a state bank shall not personally profit by retaining commissions or other income (including experience rating credits and other rebates, but not including any portion of a premium required to cover the underwriting risk) from the sale of credit life, health

and accident, and mortgage life insurance (credit life insurance) or debt cancellation contracts to the institution's loan customers.

(2) However, employees and officers may participate in a bonus or incentive plan based in whole or in part on sales of credit life insurance or debt cancellation contracts under which payments by the state bank in any year may not exceed five percent (5%) of the recipient's annual salary.

(3) Alternatively, bonuses paid to any individual during the year for sales of credit life insurance or debt cancellation contract may not exceed five percent (5%) of the average salary of all loan officers participating in the plan.

(4) Payments may not be made to employees and officers more frequently than quarterly.

(b)(1) Income derived from the sales of credit life insurance or debt cancellation contracts to loan customers shall be credited to the income accounts of the state bank and not to the individual employees, officers, directors, or principal shareholders, their interests, or other affiliates.

(2) However, such income may be credited to an affiliate operating under the Bank Holding Company Act of 1956, 12 U.S.C. § 1841 et seq., or to a trust for the benefit of all shareholders, provided that the state bank receives reasonable compensation in recognition of the role played by its personnel, premises, and goodwill in credit life insurance and debt cancellation sales.

(3) As a general rule, "reasonable compensation" means an amount equivalent to at least twenty percent (20%) of the affiliate's net income attributable to the state bank's credit life insurance or debt cancellation sales.

(c) Where other legal considerations preclude a bank from using a particular procedure for selling credit life insurance or debt cancellation contracts or from disposing of the income in a particular manner, a state bank that wishes to provide this service to its loan customers shall seek and utilize an alternative method that complies with subsections (a) and (b) of this section.

(d) The distribution to shareholders of income derived from the sale of credit life insurance and debt cancellation contracts shall be accomplished through a declaration of dividends in conformity with:

- (1) Law;
- (2) Rule;
- (3) Regulation; and
- (4) Prudent financial practices.

(e) Nothing in this section shall be construed to prohibit a bank employee, officer, director, or principal shareholder who holds an insurance agent's license from agreeing to compensate the bank for the use of its premises, employees, and goodwill provided that all income directly received by such employee, officer, director, or principal shareholder from this activity is remitted to the bank as compensation.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-101.4 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-101)"

23 CAR § 320-406. Computer services by bank or operating subsidy.

Any state bank, with the approval of the Bank Commissioner, and so long as national banks are so authorized, may furnish computer, data processing, item processing, billing, and posting services through its own organization or an operating subsidiary pursuant to Arkansas Code § 23-47-601 (and without the necessity of becoming a stockholder of a bank service company) to:

- (1) Other banks; and
- (2) Nonbanking customers who are its depositors.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-101.6 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-101)"

23 CAR § 320-407. Power to borrow.

(a) The Arkansas Banking Code imposes no restriction upon a bank's borrowing power except the issuance of capital notes.

(b) Excessive borrowing by a bank can affect its capital adequacy and may subject the bank to administrative action by the Bank Commissioner.

(c) Except in the case of capital notes, borrowing by a bank does not require prior approval by the commissioner.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-101.8 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-101)"

Subpart 5. Right of Bank to Execute Guaranty

23 CAR § 320-501. Guaranties.

(a) A state bank is not authorized to be an accommodation guarantor.

(b) An accommodation guaranty by a state bank is void and ultra vires.

(c) A state bank can execute a valid guaranty agreement if such action is necessary or advisable to protect an economic interest of the bank.

(d)(1) In *Bank of Morrilton v. Skipper, Tucker & Co.*, 165 Ark. 49, the bank executed an agreement guaranteeing the payment of certain liabilities by one (1) of its customers.

(2) The purpose of the guaranty was to enable the customer (who was indebted to the bank) to collect funds under an improvement district contract that would enable the customer to pay the debt to the bank.

(3) The case was remanded for a new trial, but the Supreme Court recognized that a guaranty executed for the purpose stated would be binding on the bank.

(e)(1) In *Wasson v. American Can Co.*, 189 Ark. 354, the bank guaranteed the payment of certain drafts by one (1) of its customers that owed it about three thousand dollars (\$3,000).

(2) The guaranty by the bank was intended to enable the customer to purchase cans for tomato canning purposes, and the intention of the bank was that this guaranty would enable the customer to continue business operations and pay part or all of the indebtedness to the bank, held that this guaranty was to protect an economic interest of the bank and was binding on the bank.

(f) The same principle of law was recognized in *Citizens Bank of Booneville v. Clements*, 172 Ark. 1023.

(g) See also *Merchants & Planters Bank & Trust Company v. Deaton*, 200 Ark. 828, also *Nakdimen v. First National Bank*, 177 Ark. 303.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-101.5 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-101)"

Subpart 6. Messenger Service

23 CAR § 320-601. Messenger service.

(a) To meet the requirements of its customers, a state bank may provide messenger services within the geographic limits of its operations by means of an armored car or otherwise, under which messenger service means any service, such as a courier service or armored car service, used by a state bank and its customers to pick up from, and deliver to, specific customers at locations such as their homes or offices, items relating to transactions between the bank and those customers.

(b) The messenger service shall be pursuant to a written contract between the bank and the customer wherein it is agreed that:

(1) In performing the functions under subsection (a) of this section, the messenger is the agent of the customer;

(2) Where funds (including currency, coin, checks, or similar items) are transmitted to the bank by messenger for deposit, title to the funds shall remain with the customer until they are accepted by the bank and the depositor relationship shall not commence until such acceptance; and

(3) Funds delivered by the bank to the messenger for transmission to a customer shall become the property of the customer when they are delivered to and accepted by the messenger, the customer's withdrawal to be deemed to have been affected as of that moment.

(c)(1) Hazard insurance covering holdup, robbery, theft, messenger fidelity, or misappropriation shall be carried for the protection of the customer for all funds transmitted by messenger to or from the bank.

(2) The premiums on such insurance may be paid by the bank.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-101.7 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-101)"

Subpart 7. Deposits

23 CAR § 320-701. Identification requirements for the transfer or closure of pay on death deposit accounts.

(a) Arkansas Code § 23-47-204(e)(4) states: "The State Bank Department shall promulgate rules that set out procedures a bank may take before transferring ownership of a deposit account, closing a deposit account, and distributing the proceeds to a person designated by the account documents as a beneficiary."

(b) Before ownership of a deposit account is transferred or a pay on death account is closed and the funds disbursed, a bank may require:

(1) For pay on death accounts, legal evidence of the death of all other account holders; and

(2) Identification from each designated beneficiary.

(c) If a designated beneficiary is a non-natural person, the bank may require:

(1) The non-natural person to provide proof of legal existence and/or good standing as an entity; and

(2) Individuals representing the non-natural person to provide:

(A) Identification; and

(B) Evidence demonstrating their authority to collect the account on the non-natural person's behalf.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-204.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. §23-47-204)"

Subpart 8. Investments

23 CAR § 320-801. Investment, corporate debt obligations.

(a) A bank may invest in debt securities, not in the purchase of stock, with certain exceptions.

(b) As to convertible debentures, if the securities are:

(1) Convertible into common stock at the option of the issuer, the bank may not purchase them; or

(2) Convertible at the option of the holder, the bank may purchase them but must write down the cost to an amount which equals the investment value of the security determined without assigning any value to the conversion feature.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-401.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-401)"

23 CAR § 320-802. Permissible exceptions — Common stock — Trust-preferred securities.

(a)(1) Common stock is not generally determined to be an investment security.

(2) The State Banking Board and Bank Commissioner rule that in some instances the purchase by a bank of common stock may facilitate the exercise of a true banking function and be incidental to the business of banking.

(3) A bank could not purchase and hold common stock solely for the purpose of collecting dividends thereon, but if the acquisition of the common stock is merely incidental to the exercise of some valid banking power, it is permitted.

(4) Banks that are active in student loan operations may purchase and hold common stock of the Student Loan Marketing Association ("Sallie Mae").

(5) Banks that participate in the secondary market for agricultural and rural housing real estate mortgages under the direction of the Federal Agricultural Mortgage Corporation ("Farmer Mac") may purchase and hold stock in the corporation (adopted by the State Banking Board April 19, 1988).

(b)(1) Trust preferred securities are investments also called "trust preferred stock" that possess characteristics similar to debt obligations.

(2) Trust preferred securities are authorized investments for a state bank provided the preferred stock meets the investment quality and marketability requirements applicable to investment securities in accordance with the Federal Deposit Insurance Corporation, Financial Institution Letter, FIL-16-99, February 19, 1999, and any amendments thereof.

(3) Investments in trust preferred securities will be subject to the bank's legal loan limitation.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-401.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-401)"

23 CAR § 320-803. Investment — Consumer paper.

(a) A bank may purchase consumer paper without:

- (1) Recourse;
- (2) Warranty; or
- (3) Repurchase agreement.

(b) If, however, the bank purchases dealer paper under an arrangement whereby the dealer endorsed the paper or guaranteed its payment or repurchase, then under Arkansas Code § 23-47-501, the loan limit (so far as the dealer is concerned) would be exceeded if the dealer's liability as endorser plus his or her primary liability, if any, to the bank exceeds twenty percent (20%) of the capital base.

(c) **Effect of reserve.** When consumer paper is purchased by the bank under guaranty or repurchase agreement, if the contract provides for the creation of a reserve by withholding from disbursements or otherwise out of which the bank is entitled to remedy defaults, for loan limit purposes the amount of this reserve may be deducted from the total advances to the dealer.

(d) **Effect of default.** If two (2) consecutive installments under an item of pledged consumer paper which the dealer has transferred with recourse or under a guaranty should at any time be in default, the entire amount remaining as owed under the defaulted item will be charged against the dealer's loan limit.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-401.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-401)"

23 CAR § 320-804. Revenue obligations.

(a)(1) Any single revenue bond issue of a governmental unit or political subdivision shall be subject to the twenty percent (20%) limitation of the capital base of the bank.

(2) A political subdivision will be defined to include an improvement district.

(b) **Note — Revenue obligations not to be combined.** For municipal bond obligations payable solely from pledged revenues, the twenty percent (20%) limitation should be applied to each business corporation whose obligation (for rent or otherwise) is being assigned to secure the bonds, and to each bond or note issue payable solely out of revenues, but these revenue bonds should not be combined in determining whether the loan limit of the municipality has been exceeded.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-401.3 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A § 23-47-401)"

23 CAR § 320-805. Trading account.

(a)(1) Any state-chartered bank, or bank holding company owning a state-chartered bank, that establishes a trading account (a "trading account" is a segregated account in which assets are held for resale by a bank that regularly engages in trading activities) should be aware that such trading account activity is a high-risk activity.

(2) Due to the inherent risk, any state-chartered bank establishing such an account is required to maintain a written policy setting forth guidelines by which the purchase and sales may be conducted.

(3) Such policy must receive the approval of the bank's board of directors, and notices of such approval, with a copy of the policy, forwarded to the Bank Commissioner.

(b) **Notice.**

(1) Engaging in trading account activity is a high-risk activity.

(2) Banks that engage in the purchase and sale of investments in anticipation of interest rate changes, price changes, and changes in the market or economic condition or for other speculative purposes are engaging in trading account type activities.

(3) Such transactions must be conducted through the appropriate establishment of a trading account.

(4) Failure to conduct such trading account type activities in a duly authorized trading account will result in the state or federal bank examiners declaring a bank's entire investment account a trading account and will require all investments to be marked to the lower of market value or acquisition cost.

(5) In establishing a trading account, bank directors are reminded of the high risk and speculative nature of this type of banking activity.

(c) **State Banking Board requirements.** If, after considering the risk of loss, and the possibility of gain, a bank wishes to establish a trading account, it must consider and adopt a policy addressing the following:

(1) The bank's board of directors shall adopt written objectives of the trading account;

(2) The bank's board of directors shall designate the officer or officers authorized to negotiate such trading transactions;

(3) The bank's board of directors shall establish the maximum dollar amount of exposure acceptable to its bank;

(4) The bank's board of directors shall identify the type of trading instruments to be traded (treasury bills, government bonds, government agencies securities, tax exempt securities, commercial paper, certificates of deposit, banker's acceptances, put options, call options, other bonds, notes and debentures, gold and silver bullion);

(5)(A) The bank's board of directors shall require all transactions to be recorded at the time a contractual obligation to purchase or to sell in an appropriate record at the bank reflecting the bank's obligation to purchase or the bank's obligation to sell.

(B) At the time a transaction is consummated, the transaction shall be fully documented requiring invoicing, settlement sheets, etc.;

(6) The bank's board of directors shall establish, prior to trading activities, the dollar amount of profit or loss it is willing for the bank to incur;

(7)(A) The bank's board of directors shall approve a list of security dealers who are eligible for the designated officer or officers of the bank to enter into trade transactions.

(B) In approving the list of the dealers, the bank's board of directors must obtain reasonable background information, current financial data, and such other information necessary to establish the character, integrity, and financial stability of the dealers which the bank's board of directors proposed to transact business;

(8) The bank's board of directors shall require monthly written reports to be submitted by the officer or officers responsible for trading account activities for review by individual directors;

(9) The bank's board of directors shall review the activities in the trading account, including the number of transactions, the bank's exposure, the profit or loss, and the trading account policy, regarding the adequacy of the policy and the bank's strict adherence to the policy, no less frequently than quarterly with such review being noted in the minutes of the board of directors' meetings; and

(10) All transactions shall comply with, and meet all requirements of:

(A) Arkansas's banking laws and rules; and

(B) Applicable federal banking laws.

(d)(1) All assets held in trading accounts are to be reported consistently at lower of the market value or acquisition cost.

(2) It is recommended this reporting be made to the bank's board of directors no less frequently than monthly.

(3) It is required that this reporting at the lower of market value or acquisition cost:

(A) Be done no less frequently than quarterly; and

(B) Reported in accordance with the instructions for the preparation of the Reports of Condition and Income.

(e) Transfers to and from a trading account, or any other account of the bank shall be recorded at market value at the time of the transfer and gains and losses recognized accordingly.

(f) All accounting of gains or losses resulting from trading account activities shall be consistent with reporting guidelines contained in the instructions for the Reports of Condition and Income.

(g) The bank's board of directors shall require written reports to the board that shall include, at a minimum, the following:

- (1) Total dollar amount held in the trading account;
- (2) Inventory list by issue with purchase price and current market value;
- (3) The number of trades that were engaged in during the previous month and the total dollar volume traded;
- (4) The dollar amount and the number of trades engaged in with each securities dealer;
- (5) The monthly profit or loss and the year-to-date profit or loss from the trading account activities, including unrealized losses; and
- (6) Any pending transactions (purchase and/or sale).

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-401.4 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-401)"

Subpart 9. Bank Service Companies

23 CAR § 320-901. Bank service companies.

(a) State banks may establish, create, or invest in bank service companies, which may be corporations or limited liability companies, to perform the bank services defined in the statute, including:

(1) Computer and data processing services; and

(2) Such other services as the Bank Commissioner may from time to time by order permit.

(b) The stock, in the case of a corporation, or the membership interest, in the case of a limited liability company, of a bank service company may also be owned by persons other than state banks.

(c) The operation of bank service companies shall be subject to regulation and examination by the commissioner so long as any state bank utilizes the services thereof and owns any equity interest in such organization or has any loans outstanding to such organization.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-603.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-603)"

23 CAR § 320-902. Limitation on investment.

The aggregate of the loans to and investment in a bank service company cannot exceed twenty percent (20%) of the capital base of a state bank.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-603.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-603)"

Subpart 10. Loan Limits

23 CAR § 320-1001. Combining loans to parent corporation and subsidiary — Loans to separate subsidiaries.

(a) The Bank Commissioner and State Banking Board rule that separate loans to a parent corporation and its subsidiary must be combined, for the assets of the parent may be represented wholly or in part by the stock of the subsidiary.

(b) If separate loans are made to two (2) or more subsidiaries that operate separately and entirely independent of each other, then so far as the loan limit law is concerned, each could borrow up to the full loan limit, but if a subsidiary is dependent in its operations upon another subsidiary of the same parent for some vital service or commodity, the loans should be combined.

(c) If the parent corporation is not borrowing, obligations of subsidiary corporations are generally not combined except in the following situations:

(1) The bank is looking to a single source for repayment of the loan;

(2) One (1) or more loans are for the accommodation of the parent corporation or other subsidiary; or

(3) The borrowing corporations are not separate concerns in reality but merely departments or divisions of a single enterprise.

(d) Obligations of a corporation must be combined with any other extension of credit the proceeds of which are used for the benefit of the corporation.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-501.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-501)"

23 CAR § 320-1002. Total indebtedness.

(a) "Total indebtedness" shall also include any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the bank and the person.

(b) For the purposes of this section, the term "derivative transaction" shall include any transaction that is a contract, agreement, swap, warrant, note, or option that is based in whole or in part on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one (1) or more:

- (1) Commodities;
- (2) Securities;
- (3) Currencies;
- (4) Interest or other rates;
- (5) Indices; or
- (6) Other assets.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-501.3 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. §23-47-501)"

23 CAR § 320-1003. Drafts or bills of exchange.

(a) The Bank Commissioner and the State Banking Board rule that this exception applies to negotiable drafts and to bills of exchange drawn by the seller of commodities upon the purchaser and bearing the acceptance of the latter, or drawn by the purchaser of commodities upon his or her bank and endorsed by the seller.

(b) In order to qualify under this exception, drafts or bills of exchange must be two-name paper.

(c) Thus, unaccepted drafts are not eligible, nor are bills of exchange endorsed without recourse or not endorsed.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-502.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-502)"

23 CAR § 320-1004. Obligations drawn against existing values.

(a) The Bank Commissioner and the State Banking Board rule that this exception applies to obligations secured by pledge of bill of lading covering goods or commodities in process of shipment.

(b) It is immaterial whether the obligation is negotiable and whether it is one-name or two-name paper, but the exception applies only to paper in connection with a sale transaction.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-502.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-502)"

23 CAR § 320-1005. Obligations secured by certain transferable documents of title.

(a) The Bank Commissioner and the State Banking Board rule that one hundred fifteen percent (115%) collateral margin applies both to livestock and readily marketable and nonperishable commodities, etc., covered by transferable documents.

(b) "Transferable documents" will be construed to include merely title documents, such as bills of lading or warehouse receipts, and not to include a lien instrument such as a chattel mortgage.

(c) If one hundred fifteen percent (115%) collateral margin should be impaired by depreciation, the failure to restore the margin may result in a loan limit violation.

(d) Even though the bank has previously loaned a borrower up to the statutory loan limit of twenty percent (20%), it may, without committing a loan limit violation, lend the same borrower additional funds against collateral properly margined as provided in subsection (c) of this section.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-502.3 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-502)"

23 CAR § 320-1006. Obligations guaranteed by Farm Service Agency.

Obligations, which the Farm Service Agency or United States Department of Agriculture (formerly Farmers Home Administration), guarantees against any loss sustained by the bank are, to the extent of such guarantee, free from loan limitations.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-502.4 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-502)"

23 CAR § 320-1007. Loans secured by certificate of deposit.

The portion of a loan properly secured by a commercial bank certificate of deposit, whether it is an "own" bank certificate of deposit or a certificate of deposit issued by another commercial bank will not be subject to that bank's legal loan limit.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-502.5 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-502)"

23 CAR § 320-1008. Loan commitments and standby letters of credit.

Loan commitments and standby letters of credit will be subject to a bank's legal loan limit in the entire amount on the date the loan commitment or letter of credit is issued in written form whether or not any, a portion of, or all of the loan has been funded.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-502.6 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-502)"

Subpart 11. [Reserved]

Subpart 12. Trust Powers

23 CAR § 320-1201. Activities not requiring trust powers.

(a) A bank acting as escrow holder under an ordinary escrow contract, where the bank has no power to invest the escrowed funds, does not require trust powers.

(b) A state bank without trust powers may act as paying agent under a bond or note issue but it may not act as trustee thereunder.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-701.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-701)"

23 CAR § 320-1202. Federal Deposit Insurance Corporation and Federal Reserve approval.

(a) A nonmember insured bank may not adopt trust powers without Federal Deposit Insurance Corporation approval.

(b) A state member bank must obtain Federal Reserve approval.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-701.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-701)"

23 CAR § 320-1203. Title to trust securities in name of a nominee.

(a) A bank or trust company in the administration of a trust may place title to trust securities in the name of a nominee.

(b) If there is a cotrustee, consent must be obtained.

(c) But a bank or trust company in such a situation will be absolutely responsible for any loss occasioned by the act of the nominee.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-701.3 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-701)"

23 CAR § 320-1204. Common trust fund.

(a)(1) This concept permits the consolidation of the assets of the various trusts being administered by the bank into a common fund for investment purposes and to

allocate to each trust a specific interest in this fund based on the amount of its contribution.

(2) An insured state-chartered nonmember bank or trust establishing a common trust fund should consult the Federal Deposit Insurance Corporation regarding its rules on such common trust funds.

(b)(1) The Internal Revenue Code and the regulations and rulings promulgated thereunder contain certain provisions that exempt common trust funds from income taxation and instead impose the tax on each trust, whether or not the income is distributed.

(2) If there is a co-fiduciary, the bank establishing the common trust fund must secure the permission of the co-fiduciary prior to the investment of trust assets into the fund.

(3) If the bank merely acts as an investment agent in respect to the investments of one (1) of its customers, such funds may not be placed in the common trust fund.

(4)(A) Any state bank establishing a common trust fund shall obtain approval of the Bank Commissioner in advance of implementation.

(B) Such approval shall not be unreasonably withheld.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-701.4 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-701)"

23 CAR § 320-1205. Individual retirement account.

(a) 26 U.S.C. § 408 et seq., establishes individual retirement accounts.

(b) A bank that has trust powers may accept deposits into individual retirement accounts and may, depending on the arrangement between the depositor and the bank, exercise discretion in the investment of such account.

(c) If a bank does not have trust powers, it may accept such deposits on a custodial arrangement only.

(d) However, reference should be made to the above cited federal law and the regulations and rulings promulgated thereunder for the administration of such accounts.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-701.5 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-701)"

23 CAR § 320-1206. Keogh plan.

A bank's activities as trustee or custodian under a Keogh Plan is governed by 26 U.S.C. § 404(e).

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-701.6 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-701)"

23 CAR § 320-1207. Trust deposits awaiting investment or distribution.

All trust deposits awaiting investment or distribution that are determined to be eligible under Arkansas Code § 28-69-206 for pledging of government securities to the deposit may be secured by a blanket pledging of eligible securities to those eligible trust deposits subject to the following requirements:

(1)(A) The total of the pledged securities must always exceed the total of the eligible trust deposits by ten percent (10%).

(B) Such trust deposits shall have a prior and preferred claim on said pledged securities;

(2) Any bank using blanket securities as collateral for eligible trust deposits must identify the securities being used and perfect a security interest in such securities for the benefit of the owners of the accounts for which the pledge is made;

(3)(A) Trust deposits that are being collateralized must be designated in the trust department's records.

(B) The actual amount of collateralization need not be given.

(C) These records should be maintained current at all times within the bank's trust department;

(4)(A) Funds held by a state bank as trustee which are awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

(B) Each state bank exercising fiduciary powers shall adopt and follow written policies and procedures intended to ensure that the maximum rate of return available for trust-quality, short-term investments is obtained upon funds so held, consistent with the requirements of the governing instrument and local law.

(C) Such policies and procedures shall take into consideration all relevant factors, including, but not limited to, the:

(i) Anticipated return that could be obtained while the cash remains uninvested or undistributed;

(ii) Cost of investing such funds; and

(iii) Anticipated need for the funds;

(5) Funds held in trust by a state bank as trustee awaiting investment or distribution may, unless prohibited by the instrument creating the trust or by local law, be deposited in the commercial or savings or other department of the bank, provided that it shall first set aside under control of the trust department as collateral security:

(A) Direct obligations of the United States;

(B) Other obligations fully guaranteed by the United States as to principal and interest; or

(C) General obligations of the State of Arkansas; and

(6)(A) The securities so deposited or securities substituted therefore as collateral shall at all times exceed the total of the eligible trust deposits by ten percent (10%), but such security shall not be required to the extent that the funds so deposited are insured by the Federal Deposit Insurance Corporation.

(B) The requirements of this section are met when qualifying assets of the bank are pledged to secure a deposit in compliance with local law, and no duplicate pledge shall be required in such case.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-705.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-705)"

23 CAR § 320-1208. Bank as trustee — Voting of own shares.

(a) The trust department of a state bank is theoretically subject to the dominion of the board of directors, and the trust department conceivably might in some situations be called upon to vote the bank's own shares for proposals more calculated to benefit the individual directors than the bank.

(b) Under the National Banking Act (12 U.S.C. § 61) a national bank cannot vote its own shares in the election of directors of the bank unless:

(1) Under the terms of the trust the manner in which the shares shall be voted may be determined by a donor or beneficiary of the trust; and

(2) Such donor or beneficiary actually directs how such shares shall be voted.

(c) Moreover, if the national bank has a cotrustee, the shares may be voted by the cotrustee.

(d) The above stated national bank rule shall be applicable with respect to voting any shares of the bank held by the trust department in the election of the bank's directors.

(e) On all other proposals, the trust department is urged to weigh carefully the issues presented and any conflicts of interest that are present before deciding whether to vote or how to vote the shares.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-701.7 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-701)"

23 CAR § 320-1209. Trust policies.

All state banks exercising trust powers shall adopt a trust policy setting forth, at a minimum:

(1) Trust department investment practices, including investments in the obligations of the bank and its affiliates;

(2) Voting practices and procedures concerning the bank's stock and the stock of any affiliates of the bank; and

(3) Trust account administration policies and procedures.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 47-701.8 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-47-701)"

Subpart 13. Fiduciary Powers of State Banks

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"47-701.9"

"(Reference A.C.A. § 23-47-701)"

23 CAR § 320-1301. Definitions.

For the purposes of this part:

(1) "Account" means the trust, estate, or other fiduciary relationship that has been established with a bank;

(2) "Custodian under a Uniform Gifts to Minors Act" means an account established pursuant to a state law that is substantially similar to the Uniform Gifts to Minors Act as published by the American Law Institute and with respect to which the bank operating such account has established to the satisfaction of the United States Secretary of the Treasury that it has duties and responsibilities similar to duties and responsibilities of a trustee or guardian;

(3) "Fiduciary" means a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes:

- (A) Trustee;
- (B) Executor;
- (C) Administrator;
- (D) Registrar of stocks and bonds;
- (E) Guardian of estates;
- (F) Assignee;
- (G) Receiver;
- (H) Committee of estates of incompetents;
- (I) Managing agent; and
- (J) Any other similar capacity;

(4) "Fiduciary powers" means the power to act in any fiduciary capacity as authorized by Arkansas state law or any applicable federal law;

(5) "Fiduciary records" means all matters that are written, transcribed, recorded, received, or otherwise come into possession of a bank and are necessary to preserve information concerning the acts and events relevant to the fiduciary activities of a bank;

(6) "Guardian" means the guardian or committee by whatever name employed by local law of the estate of an infant, an incompetent individual, an absent individual, or a competent individual over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws;

(7) "Investment authority" means the responsibility conferred by action of law or a provision of an appropriate governing instrument to:

- (A) Make, select, or change investments;
- (B) Review investment decisions made by others; or
- (C) Provide investment advice or counsel to others;

(8) "Local law" means the law of the state or other jurisdiction governing the fiduciary relationship;

(9) "Managing agent" means the fiduciary relationship assumed by a bank upon the creation of an account that names the bank as agent and confers investment discretion upon the bank;

(10) "State bank" means any bank, trust company, savings bank, or other banking institution that is not a national bank and the principal office of which is located in:

(A) The District of Columbia; or

(B) Any state, commonwealth, or territorial possession of the United States; and

(11) "Trust department" means that group or groups of officers and employees of a bank organized under the supervision of officers or employees to whom are designated by the board of directors the performance of the fiduciary responsibilities of the bank, whether or not the group or groups are so named.

Authority. Arkansas Code § 23-46-205.

23 CAR § 320-1302. Adoption of policies and procedures with respect to brokerage placement practices.

(a) Each state bank exercising investment discretion (as defined in 12 C.F.R. § 12.2(h)) with respect to an account shall adopt and follow written policies and procedures intended to ensure that its brokerage placement practices comply with all applicable laws.

(b) Among other relevant matters, such written policies and procedures should address, where appropriate:

(1) The selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to such persons (including the factors considered in these determinations);

(2) Any acquisition of services or products, including research services, in return for brokerage commissions;

(3) The allocation of research or other services among accounts, including those which did not generate commissions to pay for such research or other services; and

(4) The need, in appropriate instances, to make disclosures concerning such policies and procedures to prospective and existing customers.

Authority. Arkansas Code § 23-46-205.

23 CAR § 320-1303. Administration of fiduciary powers.

(a)(1)(A) The board of directors is responsible for the proper exercise of fiduciary powers by the bank.

(B) All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the bank in the exercise of its fiduciary powers, are the responsibility of the board.

(C) In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the bank's fiduciary powers as it may consider proper to assign to such directors, officers, employees, or committees as it may designate.

(2)(A) No fiduciary account shall be accepted without the prior approval of the board or of the directors, officers, or committees to whom the board may have designated the performance of that responsibility.

(B) A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts.

(C) Upon the acceptance of an account for which the bank has investment responsibilities, a prompt review of the assets shall be made.

(D) The board shall also ensure that at least once during every calendar year thereafter, all the assets held in or for each fiduciary account where the bank has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets.

(E) A written record shall be made of the approval of all purchases, sales, and changes of trust assets.

(3)(A) The board of directors shall name a Trust Committee consisting of at least three (3) directors, at least one (1) of whom shall not be an officer of the bank, to be responsible for and supervise the activities of the trust department.

(B) The Trust Committee shall meet at least quarterly or more frequently if necessary and prudent to adequately supervise the activities of the department.

(C) The Trust Committee shall:

(i) Keep full minutes of its actions; and

(ii) Make periodic reports thereof to the board.

(b) All officers and employees taking part in the operation of the trust department shall be adequately bonded.

(c) Every state bank exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to:

(1) Pass upon fiduciary matters; and

(2) Advise the bank and its trust department.

(d)(1) The trust department may utilize personnel and facilities of other departments of the bank, and other departments of the bank may utilize personnel and facilities of the trust department only to the extent not prohibited by law.

(2) Every state bank exercising fiduciary powers shall adopt written policies and procedures to ensure that the federal and state securities laws are complied with in connection with any decision or recommendation to purchase or sell any security.

(3) Such policies and procedures, in particular, shall ensure that state bank trust departments shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(e)(1) The Trust Committee shall review the examination reports of the trust department by supervisory agencies and record its action thereon in its minutes.

(2) Nothing herein is intended to prohibit the board of directors from:

(A) Acting as the Trust Committee;

(B) Designating additional officers to administer the operations of the trust department and defining their duties; or

(C) Appointing additional committees for the trust department operation and defining the duties of such committee.

Authority. Arkansas Code § 23-46-205.

23 CAR § 320-1304. Books and accounts.

(a)(1) Every state bank exercising fiduciary powers shall keep its fiduciary records separate and distinct from other records of the bank.

(2) All fiduciary records shall be so kept and retained for such time as to enable the bank to furnish such information or reports with respect thereto as may be required by the State Bank Department.

(3) The fiduciary records shall contain full information relative to each account.

(b) Every such state bank shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

(c) Solely for purposes of examination by the department, a state bank shall retain the records required by this section for a period of three (3) years from the later of termination of the fiduciary account relationship to which the records relate or of litigation relating to such account, unless applicable law specifically prescribes a different period.

Authority. Arkansas Code § 23-46-205.

23 CAR § 320-1305. Audit of trust department.

(a) A committee of directors, exclusive of any active officers of the bank, shall at least once during each calendar year make suitable audits of the trust department or cause suitable audits to be made by auditors responsible only to the board of directors and at such time shall ascertain whether the department has been administered in accordance with:

- (1) Law;
- (2) Applicable regulations; and
- (3) Sound fiduciary principles.

(b) The board of directors may elect, in lieu of such periodic audits, to adopt an adequate continuous audit system.

(c) A report of the audits and examination required under this section, together with the action taken thereon, shall be noted in the minutes of the board of directors.

Authority. Arkansas Code § 23-46-205.

23 CAR § 320-1306. Investment of funds held as fiduciary.

(a)(1) Funds held by a state bank in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law.

(2) When such instrument does not specify the character or class of investments to be made and does not vest in the bank, its directors, or its officers a discretion in the matter, funds held pursuant to such instrument shall be invested in any investment in which corporate fiduciaries may invest under local law.

(b)(1) If, under local law, corporate fiduciaries appointed by a court are permitted to exercise a discretion in investments, or if a state bank acting as fiduciary under appointment by a court is vested with a discretion in investments by an order of such court, funds of such accounts may be invested in investments which are permitted by local law.

(2) Otherwise, a state bank acting as fiduciary under appointment by a court must make all investments of funds in such accounts under an order of that court.

(3) Such orders in either case shall be preserved with the fiduciary records of the bank.

(c) The collective investment of funds received or held by a state bank as fiduciary is governed by 23 CAR § 320-1401.

(d) As a part of each examination of the trust department of a state bank the State Bank Department will examine the investments held by such bank as fiduciary,

including the investment of funds under the provisions of 23 CAR § 320-1401, in order to determine whether such investments are in accordance with:

- (1) Law;
- (2) This part; and
- (3) Sound fiduciary principles.

Authority. Arkansas Code § 23-46-205.

23 CAR § 320-1307. Self-dealing.

(a) Unless lawfully authorized by the instrument creating the relationship or by court order or by local law, funds held by a state bank as fiduciary shall not be invested in stock or obligations of, or property acquired from, the bank or its directors, officers, or employees, or individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the bank in acquiring the property, or in stock or obligations of, or property acquired from, affiliates of the bank or their directors, officers, or employees.

(b) Property held by a state bank as fiduciary shall not be sold or transferred, by loan or otherwise, to the bank or its directors, officers, or employees, or to individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the bank in selling or transferring such property, or to affiliates of the bank or their directors, officers, or employees, except:

(1) Where lawfully authorized by the instrument creating the relationship or by court order or by local law;

(2) In cases in which the bank has been advised by its counsel in writing that it has incurred as fiduciary a contingent or potential liability and desires to relieve itself from such liability, in which case such a sale or transfer may be made with the approval of the board of directors, provided that in all such cases the bank, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the account;

- (3) As is provided in subsection (b)(8)(B) of this rule; or
- (4) Where required by the State Bank Department.

(c)(1) Except as provided in 23 CAR § 320-1306(b), funds held by a state bank as fiduciary shall not be invested by the purchase of stock or obligations of the bank or its affiliates unless authorized by the instrument creating the relationship or by court order or by local law, provided that if the retention of stock or obligations of the bank or its affiliates is authorized by the instrument creating the relationship or by court order or by local law, it may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rata to stockholders, unless such exercise is forbidden by local law.

(2) When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired.

(d) A state bank may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and if such transaction is not prohibited by the terms of any governing instrument or by local law.

(e) A state bank may make a loan to an account from the funds belonging to another such account, when the making of such loans to a designated account:

- (1) Is authorized by the instrument creating the account from which such loans are made; and
- (2) Is not prohibited by local law.

(f) A state bank may make a loan to an account and may take as security therefore assets of the account, provided such transaction:

- (1) Is fair to such account; and
- (2) Is not prohibited by local law.

Authority. Arkansas Code § 23-46-205.

23 CAR § 320-1308. Custody of investments.

(a)(1) The investments of each account shall be kept separate from the assets of the bank and shall be placed in the joint custody or control of not less than two (2) of the officers or employees of the bank designated for that purpose by the board of directors of the bank or by one (1) or more officers designated by the board of directors of the bank, and all such officers and employees shall be adequately bonded.

(2) To the extent permitted by law, a state bank may permit the investments of a fiduciary account to be deposited elsewhere.

(b) The investments of each account shall be either:

(1) Kept separate from those of all other accounts, except as provided in 23 CAR § 320-1401; or

(2) Adequately identified as the property of the relevant account.

Authority. Arkansas Code § 23-46-205.

23 CAR § 320-1309. Deposit of securities with state authorities.

(a) Whenever the local law requires corporations acting as fiduciary to deposit securities with the state authorities for the protection of private or court trusts, every state bank in that state authorized to exercise fiduciary powers shall, before undertaking to act in any fiduciary capacity, make a similar deposit with the state authorities.

(b) If the state authorities refuse to accept such a deposit, the securities shall be deposited with the Federal Reserve Bank of the district in which such state bank is located, and such securities shall be held for the protection of private or court trusts with like effect as though the securities had been deposited with the state authorities.

Authority. Arkansas Code § 23-46-205.

23 CAR § 320-1310. Compensation of bank.

(a)(1) If the amount of the compensation for acting in a fiduciary capacity is not regulated by local law or provided for in the instrument creating the fiduciary

relationship or otherwise agreed to by the parties, a state bank acting in such capacity may charge or deduct a reasonable compensation for its services.

(2) When the bank is acting in a fiduciary capacity under appointment by a court, it shall receive such compensation as may be allowed or approved by that court or by local law.

(b) No state bank shall, except with the specific approval of its board of directors, permit any of its officers or employees, while serving as such, to retain any compensation for acting as a co-fiduciary with the bank in the administration of any account undertaken by it.

Authority. Arkansas Code § 23-46-205.

23 CAR § 320-1311. Receivership or voluntary liquidation of bank.

(a) Whenever a receiver is appointed for a state bank by the Bank Commissioner, such receiver shall, pursuant to the instructions of the commissioner and to the orders of the court having jurisdiction, proceed to:

- (1) Close such accounts as can be closed promptly; and
- (2) Transfer all other accounts to substitute fiduciaries.

(b) Whenever a state bank exercising fiduciary powers is placed in voluntary liquidation, the liquidating agent shall, in accordance with the local law, proceed at once to liquidate the affairs of the trust department as follows:

(1) All trust and estates over which a court is exercising jurisdiction shall be closed or disposed of as soon as practical in accordance with the orders or instructions of such court; and

(2) All other accounts that can be closed promptly shall be closed as soon as practicable and final accounting made therefore, and all remaining accounts shall be transferred by appropriate legal proceedings to substitute fiduciaries.

Authority. Arkansas Code § 23-46-205.

23 CAR § 320-1312. Surrender or revocation of fiduciary powers.

(a) Any state bank that has been granted the right to exercise fiduciary powers and that desires to surrender such right shall file with the Bank Commissioner a certified copy of the resolution of its board of directors signifying such desire.

(b) Upon receipt of such resolution, the commissioner shall:

(1) Make an investigation; and

(2) If satisfied that the bank has been discharged from all fiduciary duties which it has undertaken, issue a certificate to such bank certifying that it is no longer authorized to exercise fiduciary powers.

Authority. Arkansas Code § 23-46-205.

Subpart 14. Collective Investment Funds

23 CAR § 320-1401. Collective investment.

Any common trust fund or collective investment authorized by Arkansas Code § 28-69-202 shall be established and maintained in accordance with 12 C.F.R. § 9.18 as of January 1, 2019.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"(Common Trust Funds as in A.C.A. § 28-69-202)"

Subpart 15. Organization and Operation

23 CAR § 320-1501. Legal holiday — Applicable law.

(a) The legal holidays applicable to state banks shall be those holidays set forth in Arkansas Code § 1-5-101 and such other holidays as shall be established from time to time by the Board of Governors of the Federal Reserve System.

(b) A state bank is not required to close on any legal holiday.

(c) A bank may close one (1) business day of each week in which event the day of such closing is deemed a legal holiday and not a business day.

(d) Business transacted on a holiday is binding and shall have the same effect as if transacted on the next succeeding business day.

(e) All items payable on a legal holiday shall be deemed to be payable on the day next succeeding the holiday.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-103.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-103)"

23 CAR § 320-1502. Charter amendment application for change of bank corporate name.

(a) Prior to filing an application with the State Bank Department for a charter amendment to change the corporate name of a state bank, the bank must complete the following procedures:

(1)(A) Publish legal notice of intention to change the corporate name of the bank one (1) time in a newspaper of statewide circulation.

(B) Such notice shall include both the:

(i) Current corporate name of the bank; and

(ii) Proposed new name.

(C) A copy of the legal notice must accompany the application; and

(2)(A) Request a current check of both state and federal trademark or service mark filings on the proposed new name.

(B) Evidence must accompany the application for charter amendment verifying:

- (i) The applicant has made a trademark or service mark search; and
- (ii) No trademark or service mark exists for the proposed name.

(b)(1) Once the charter amendment is received by the department, notice of the filing of the application will be sent to all state-chartered banks by electronic transmission.

(2) Any protestants will have seven (7) days from the date the department notice was sent to file an official protest to the application.

(3) An official protest must be:

(A) Provided to the department in written form delineating the reasons for the protest; and

(B) Accompanied by a filing fee of two hundred dollars (\$200).

Authority. Arkansas Code §§ 23-46-205, 23-46-509.

Codification Notes. This section was promulgated as Section 48-307.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-307)"

23 CAR § 320-1503. Reservation of bank corporate name.

(a)(1) The State Bank Department will accept a reservation for a bank corporate name only prior to and for the purpose of formation of a new state bank or prior to the consummation of an interstate merger transaction.

(2) The reservation will be for a nonrenewable two hundred seventy-day period.

(3) A name not used permanently prior to the expiration of this period will be cancelled.

(b)(1) Prior to filing a reservation of corporate name an applicant must request a current check of both state and federal trademark or service mark filings on the proposed name.

(2) Evidence must accompany the application for reservation of corporate name verifying:

(A) The applicant has made a trademark or service mark search; and

(B) No trademark or service mark exists for the proposed name.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-309.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A § 23-48-309)"

23 CAR § 320-1504. Appeal of Bank Commissioner decision on minimum capital requirements to State Banking Board.

(a) A state bank may appeal an order of the Bank Commissioner to increase its capital stock to the State Banking Board.

(b) Notice of the bank's request for appeal must be served upon the commissioner and the members of the board by personal service or certified mail within ten (10) days of the date the commissioner's order was issued.

(c) A public hearing on the appeal will be held as soon as practicable by the board.

(d) Notice of the hearing will be given twenty (20) days prior to the date of the hearing stating the time, date, and location of the hearing.

(e) Notice will be:

(1) Provided by United States mail to the parties to the appeal; and

(2) Published one (1) time in a newspaper of statewide circulation.

(f) The bank requesting such an appeal will be required to provide a court reporter and transcript of the hearing to the board free of charge.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-310.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. 23-48-310)"

23 CAR § 320-1505. Capital notes.

(a)(1) A state bank, with the prior approval of the Bank Commissioner, may issue subordinated capital notes.

(2) These notes may be authorized by the bank's directors, no stockholder's action being required.

(3) The notes must be sold at not less than par.

(4) The aggregate par value of the outstanding capital notes of a bank shall not exceed one-half ($\frac{1}{2}$) of the capital base of the issuing bank.

(5) Such notes shall be retired at such time and in such manner as may be fixed by the board of directors of the issuing bank, but not later than twenty (20) years after the date of issuance, subject to extension of the term as set forth in Arkansas Code § 23-48-315.

(b)(1) It is strongly suggested that the terms of the capital notes clearly state that the subordination to deposit liabilities shall be effective only while the bank is in a state of impaired capital, insolvency, liquidation, etc.

(2) Otherwise, the bank, though entirely solvent, might find it impossible (without violating the provisions of the notes) to pay the capital notes until it had retired all of the senior indebtedness.

(c) A bank issuing capital notes must procure from the State Securities Commissioner an exemption certificate under Arkansas Code § 23-42-503.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-315.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-315)"

23 CAR § 320-1506. Federal regulations.

(a) Pursuant to both the Federal Reserve and Federal Deposit Insurance Corporation regulations, the capital notes must have an original average weighted maturity of five (5) years or more.

(b) The five-year term begins not from the date written on the note, but from the date the note is actually issued and placed in circulation.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-315.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-315)"

Subpart 16. Change in Control

23 CAR § 320-1601. Transfers affecting change in control.

(a)(1) The acquisition of a state bank by a bank holding company, or the acquisition of twenty-five percent (25%) or more of the common stock of a state bank or a bank holding company controlling a state bank subsidiary, will be considered a change in control.

(2) The ownership of more than five percent (5%) of the outstanding voting shares of a state bank is considered a controlling interest.

(b) Any person, persons, or entity desiring to obtain control of a state-chartered bank or bank holding company controlling a state bank subsidiary shall be required to file an application with the Bank Commissioner on a form prescribed by the commissioner containing the information set forth in Arkansas Code § 23-48-317(d) and such other information as the commissioner may require.

(c) An application for a change in control which will authorize the applicant's ownership to initially exceed of twenty-five percent (25%) of the stock in a bank or bank holding company controlling a state bank subsidiary shall be accompanied by a filing fee of five thousand dollars (\$5,000).

Authority. Arkansas Code §§ 23-46-205, 23-46-509.

Codification Notes. This section was promulgated as Section 48-317.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-317)"

Subpart 17. Dividends

23 CAR § 320-1701. Dividends — Prior approval.

Prior approval of the Bank Commissioner shall be obtained prior to declaration and payment of any dividend by any state bank that shall amount to seventy-five percent (75%) or more of the net profits of the bank after all taxes for the current year

(annualized) plus seventy-five percent (75%) of the retained net profits for the immediately preceding year.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-203.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-203)"

Subpart 18. Stock Issue and Transfer Issue of Stock

23 CAR § 320-1801. Payment for stock.

Under Arkansas Constitution, Article 12, § 8, corporate stock can be issued only for "money or property actually received, or labor done". A bank may not issue stock against the purchaser's promissory note, and it cannot issue stock at a price less than the par value thereof. *Bank of Dermott v. Measel*, 172 Ark. 193; *Bank of Manila v. Wallace*, 177 Ark. 190; *Blanks v. American So. Trust Co.*, 177 Ark. 832; *Murray v. Murray Laboratories, Inc.*, 223 Ark. 907; *Bank of Commerce v. Goolsby*, 129 Ark. 416.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-311.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-311)"

23 CAR § 320-1802. Discriminatory sales of stock.

(a) The issuance of new shares at an inadequate price operates to dilute the value of outstanding shares.

(b) Therefore, even when the shareholders agree that shares may be sold free of preemptive rights the directors are under a fiduciary duty to fix a reasonable price for the shares thus sold.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-311.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-311)"

23 CAR § 320-1803. Fractional shares — Scrip.

(a) Unless prohibited by the articles of agreement, or any amendment thereto, or bylaws, a bank may issue a certificate for a fractional share.

(b) The creation of fractional shares sometimes occurs in connection with stock dividends.

(c) In lieu of issuing certificates for fractional shares the bank may issue scrip.

(d) A scrip certificate specifies that the holder has rights in respect to a designated number of fractional shares, and a person holding scrip certificates covering fractional interests equal to a full share may exchange such certificates for a certificate covering one (1) share.

(e) Unless otherwise provided in the articles or bylaws, a fractional share shall (but scrip will not) entitle the holder to vote or receive dividends.

(f) Where scrip is issued, the directors may provide that it shall become void unless exchanged for certificates representing full shares before a specified date.

(g) Where scrip is issued it is customary to establish certain officials as a clearing house to handle the sale of the fractional interests whose holders desire to sell and to

handle the purchase for those who desire to purchase additional rights for the purpose of matching them into full shares.

(h) Further, where scrip is issued, the directors may provide that it will become void if not exchanged for certificates representing full shares before a specified date, or the State Banking Board may provide that the shares for which the scrip is exchangeable may be sold by the bank and the proceeds thereof distributed to the holders of such scrip.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-313.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-313)"

23 CAR § 320-1804. Preemptive rights.

(a) Banks chartered on or prior to May 30, 1997.

(1) Unless otherwise provided by the articles of agreement, or an amendment thereto, every stockholder, upon the sale for cash of any new stock of the same class as that which the stockholder already holds, shall have the right to purchase his or her pro rata share thereof at a price not exceeding the price at which it may be offered to others, which price may be in excess of par.

(2) Where the articles of agreement, or amendment thereto, do not prohibit such preemptive rights, the terms and conditions of such rights, and the time limit fixed for the exercise thereof may be prescribed in the articles of agreement or amendment, or, if not so prescribed in the articles of agreement or amendment, then in the bylaws or in the resolution of the board of directors adopted in connection with such stock increase.

(b) **Banks chartered after May 30, 1997.** Except as expressly provided in the articles of agreement, or an amendment thereto, upon the sale for cash of any new stock whether or not of the same class as the stock which is outstanding, no stockholder shall have the right to purchase any portion thereof by reason of his or her stock ownership.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-314.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-314)"

23 CAR § 320-1805. Waiver of preemptive rights.

The waiver of preemptive rights of a shareholder, if applicable, involves a personal act by each stockholder, and such waiver cannot be accomplished by a stockholder vote at a stockholders' meeting, except for the waiver by shareholders of any applicable preemptive rights that would attach to shares that are authorized by a due vote of the shareholders to be issued upon the conversion of any convertible capital notes or pursuant to any stock option, stock purchase, employee stock ownership plan, or other compensation plan authorized by Arkansas Code § 23-47-101(a)(10).

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-314.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-314)"

23 CAR § 320-1806. Stock issuance to be reported.

The initial issuance of shares of a state bank or a bank holding company that has a state bank subsidiary pursuant to the provisions of the articles of incorporation, or any amendment thereto, authorizing the issuance of additional shares must be reported in each instance as and when issued.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-316.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-316)"

23 CAR § 320-1807. Information required on reported transfers.

(a) Except in the case of bank holding companies that are reporting companies, the bank or the bank holding company must certify to the Bank Commissioner the:

- (1) Number of shares held by the transferee prior to such transfer;
- (2) Name of every person known by it to be holding any shares as nominee of the transferee or in trust for or otherwise for the benefit of such transferee; and
- (3) Number of shares so held by each such person.

(b) In the case of a bank holding company which is a reporting company under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., the bank holding company shall promptly report after the calendar year end all transactions by any record owner of shares (other than a nominee for an institution) that owns as of the end of such calendar year three percent (3%) or more of the outstanding stock of the bank holding company.

(c) Such report shall show for each transaction by such persons the:

- (1) Number of shares held by such person prior to such transfer;

(2) Name of every person known by the bank holding company to be holding any shares as nominee of such person or in trust for or otherwise for the benefit of such person; and

(3) Number of shares so held.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-316.3 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-316)"

Subpart 19. Stockholders' Meetings

23 CAR § 320-1901. Notice of meeting.

(a) Written notice of a special meeting must be given to the shareholders by mail according to the bylaws, but in no event for less than ten (10) days.

(b) Written notice of an annual meeting, even though only routine matters are to be considered at the meeting, must be given at least ten (10) days before the meeting.

(c) If the capital stock or the bonded indebtedness is to be increased at either a special or annual meeting, sixty (60) days' notice is required under Arkansas Constitution, Article 12, § 8.

(d) The notice of a special or annual meeting should:

(1) Indicate the time, place, and purpose of the meeting; and

(2) Be sent by first class mail.

(e) The act of mailing constitutes notice.

(f) Any officer may sign the notice.

(g) Moreover, at an annual meeting, if the charter is to be amended or any other extraordinary matters submitted to the stockholders, the notice of the meeting must

specify that such charter amendment or other such extraordinary matters will be submitted.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-318.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-318)"

23 CAR § 320-1902. Cumulative voting.

(a)(1) For state banks incorporated on or before May 30, 1997, unless otherwise provided in the articles or bylaws, cumulative voting for directors or on any other issues is permitted.

(2) Thus, if there are five (5) directors to be elected, a stockholder owning fifty (50) shares could vote fifty (50) shares for each director, or the stockholder could cast two hundred fifty (250) votes for one (1) director (Arkansas Code § 23-32-222 [repealed]).

(3) The statute authorizes cumulative voting in connection with the election of directors or on any other issue.

(b) For state banks incorporated after May 30, 1997, cumulative voting is not permitted unless and only to the extent provided for in the articles of incorporation of the bank.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-320.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-320)"

Arkansas Code § 23-32-222 was repealed by Acts 1997, No. 89, § 3.

Subpart 20. Directors and Stockholders

23 CAR § 320-2001. Board of directors.

(a) The affairs of every bank organized under the laws of this state shall be managed and controlled by a board of directors of not fewer than three (3) persons who shall be selected at such times and in such manner as may be provided by its articles of incorporation or bylaws.

(b) Except as required in the articles of incorporation or bylaws, no director of a state bank shall be required to be a stockholder of such bank.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-322.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-322)"

23 CAR § 320-2002. Officer or director removal.

(a) Any officer or director found by the Bank Commissioner to be violating state or federal law, State Bank Department rules, or basic principles of safety and soundness in the operation of a bank may be reported in writing to the directors of the bank of which he or she is an officer or director, or the commissioner may cause such officer or director to be removed from service to the institution by means of a cease and desist order issued by the commissioner against the bank and its board of directors.

(b) If the commissioner reports such activities in writing to the bank's board of directors and the board neglects or refuses to remove such officer or director, the directors may be:

(1) Individually liable for any loss that may occur to the bank by reason of their lack of action; and

(2) Subject to the assessment of monetary penalties for such failure by the commissioner.

Authority. Arkansas Code §§ 23-46-205, 23-46-505.

Codification Notes. This section was promulgated as Section 48-322.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-322)"

Subpart 21. Procedures at Bank Meetings, Directors' Meetings

23 CAR § 320-2101. Directors' meetings.

The procedure at the regular and special meeting of the board of directors shall be governed by the terms of the articles of incorporation and bylaws of the bank; provided, however, no proxy given by a director for any meeting of the board of directors shall be effective for determining a quorum, voting, or any other purpose.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-322.3 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-322)"

Subpart 22. Reserves of Banks

23 CAR § 320-2201. Penalty — Failure to maintain reserve.

(a) If any state bank shall fail during any period to maintain the reserve required under the Banking Code, the Bank Commissioner may require such bank to pay a penalty computed on the basis of eight percent (8%) per annum on the amount of such deficit for the period that the deficit continues, provided that the commissioner, in his or her discretion, may waive any penalty for a period that is less than twenty-five dollars (\$25.00).

(b) This penalty shall not prevent the commissioner, under other applicable provisions of the law, from placing a state bank in liquidation due to a violation of reserve requirements.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-202 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-202)"

Subpart 23. Branch Banks

23 CAR § 320-2301. Bank fictitious names.

(a) A state bank planning to file an application for use of a fictitious name must complete the following procedures prior to filing an application with the State Bank Department:

(1)(A) Publish legal notice of intention to file an application for use of a fictitious name one (1) time in a newspaper of statewide circulation.

(B) Such notice shall include the:

(i) Current corporate name;

(ii) Proposed fictitious name; and

(iii) Location or locations where the proposed fictitious name will be used.

(C) A copy of the legal notice must accompany the application; and

(2)(A) Request a current check of both state and federal trademark or service mark filings on the proposed fictitious name.

(B) Evidence must accompany the application for use of a fictitious name verifying:

(i) The applicant has made a trademark or service mark search; and

(ii) No trademark or service mark exists for the proposed fictitious name.

(b)(1) Once the application for use of a fictitious name is received by the department, notice of the filing of the application will be sent to all state-chartered banks by electronic transmission.

(2) Any protestant will have seven (7) days from the date the department notice was sent to file an official protest to the application.

(3) An official protest must be:

(A) Provided to the department in written form delineating the reasons for the protest; and

(B) Accompanied by a filing fee of twenty-five dollars (\$25.00).

(4) The Bank Commissioner will make the final determination on the use of a fictitious name.

(c)(1) Notwithstanding the above requirements, an applicant bank that has previously filed and been approved for the use of a specific fictitious name is not required to perform the publication of notice or trademark search requirements for subsequent use of the same fictitious name.

(2) However, the bank must file an application for subsequent use of the same fictitious name at a new location.

Authority. Arkansas Code §§ 23-46-205, 23-46-509.

Codification Notes. This section was promulgated as Section 48-309.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-309)"

Subpart 24. Full-Service Branches — Limited Purpose Offices

23 CAR § 320-2401. Healthy bank.

(a) A "healthy bank" is defined as an institution meeting all of the following criteria:

- (1) Received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS) as a result of its most recent commercial bank examination;
 - (2) Received a satisfactory or better Community Reinvestment Act rating from its primary federal regulator at its most recent examination;
 - (3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;
 - (4) Is well capitalized as defined in the appropriate capital rule and guidance of the institution's primary federal regulator;
 - (5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or board resolution with its primary federal regulator or chartering authority; and
 - (6) Have no major unresolved supervisory issues outstanding or other significant concerns (as determined by the Bank Commissioner).
- (b)(1) Only a healthy bank is eligible to file an expedited branch application.

(2) If any one (1) of the listed criteria is not met, a standard branch application must be filed.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-701 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-701)"

23 CAR § 320-2402. Relocation of existing full-service branch.

(a) A state bank may file a notice with the Bank Commissioner to relocate any existing full-service branch to another location then authorized by law.

(b) The following rules govern such notice:

(1) **Fees.** A fee of three hundred dollars (\$300) shall accompany the notice to the commissioner as set by this part;

(2) **Notice to the commissioner.** Written notice shall be filed with the commissioner (on a form prescribed by the commissioner) at least thirty (30) days prior to the proposed relocation of the existing full-service branch;

(3) **Publication of notice.**

(A) The state bank shall publish a notice of the proposed relocation of the existing full-service branch in a newspaper of statewide circulation one (1) time prior to filing notice of relocation with the commissioner.

(B) A proof of publication must accompany the notice of relocation to the commissioner.

(C) The publication may be run no more than three (3) weeks before the filing of the notice;

(4) **Approval by commissioner.** A notice of relocation of an existing full-service branch is deemed approved if the commissioner takes no action on the notice within thirty (30) days after filing of the notice;

(5) **Formal protest.**

(A) Each bank, corporation, or individual that files with the commissioner a formal written protest to the relocation of an existing full-service branch shall be required to pay a protest fee of three hundred dollars (\$300).

(B) The fee must accompany or precede the formal written protest, which must be received by the commissioner within fifteen (15) calendar days of the actual filing of the notice of relocation.

(C) The written protest must include a specific reason or reasons for protesting the relocation.

(D) Further, the State Banking Board requires all formal protests be specific to those principles set forth in Arkansas Code § 23-48-703(a);

(6) **Letters of opposition.** Any aggrieved bank, corporation, or individual may file a letter of opposition (not an official protest) to a notice of relocation of an existing full-service branch without incurring any liability for the fee assessed to formal protesting parties;

(7) **Date of filing.** Written notice to the commissioner to relocate an existing full-service branch, formal protest or protests, and letter or letters of opposition are considered filed on the date stamped as filed by the commissioner; and

(8) **Public hearing at the commissioner's discretion.**

(A) The commissioner at his or her discretion may hold a public hearing on a notice of relocation of an existing full-service branch.

(B) If a hearing is to be held, the commissioner shall give notice in a newspaper of statewide circulation once at least ten (10) days prior to the date of the hearing.

(C) Further, the commissioner shall notify by mail the party sending notice of relocation and official protestant or protestants at least ten (10) days prior to the hearing.

Authority. Arkansas Code §§ 23-46-205, 23-46-509.

Codification Notes. This section was promulgated as Section 48-702.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-702)"

23 CAR § 320-2403. Short distance relocation.

(a)(1)(A) In accordance with Arkansas Code § 23-48-702(d)(5), the State Banking Board rules a bank may relocate an existing full-service branch within an immediate neighborhood without requiring publication of notice pursuant to Acts 2007, No. 42.

(B) However, the bank must file written notice of relocation within an immediate neighborhood with the Bank Commissioner.

(2) The following rules govern such notice:

(A) **Fees.** A fee of two hundred fifty dollars (\$250) shall accompany the notice to the commissioner as set by this part;

(B) **Notice to the commissioner.** Written notice shall be filed with the commissioner (on a form prescribed by the commissioner) at least thirty (30) days prior to the proposed relocation of an existing full-service branch within an immediate neighborhood;

(C) **Approval by commissioner.** A notice of relocation within an immediate neighborhood is deemed approved by the commissioner if the commissioner takes no action on the notice within thirty (30) days after filing of the notice; and

(D) **Date of filing.** Notice to the commissioner to relocate a branch within an immediate neighborhood is considered filed on the date stamped as filed by the commissioner.

(b) Arkansas Code § 23-48-702 defines "within the immediate neighborhood" as including, but not limited to:

- (1) Across the street;
- (2) Around the corner;
- (3) Within two (2) blocks;
- (4) Within one thousand feet (1000'); or
- (5)(A) In densely populated areas, within five thousand feet (5000').

(B) For the purpose of relocating within the immediate neighborhood, "densely populated area" is defined as a community with a population of over five thousand (5,000) people.

Authority. Arkansas Code §§ 23-46-205, 23-46-509.

Codification Notes. This section was promulgated as Section 48-702.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-702)"

23 CAR § 320-2404. Limited purposes offices.

(a) Establishment of limited purpose office.

(1) **Within the State of Arkansas.** Any bank may establish a limited purpose office anywhere in the state to conduct noncore banking activities upon satisfaction of the notice requirement set forth in this subsection.

(2) Outside the State of Arkansas.

(A) Any state bank may establish a limited purpose office in another state subject to the rules of the state in which it seeks to establish the limited purpose office.

(B) The state bank must also satisfy the notice requirement set forth in this section.

(b) As to each limited purpose office which a state bank proposes to establish or use within or outside the State of Arkansas, the state bank shall give not less than thirty

(30) days prior written notice of its intention to establish or use the limited purpose office to the Bank Commissioner.

(c)(1) The written notice to the commissioner (on a form prescribed by the commissioner) shall include the following information:

- (A) The location and general description of the surrounding area;
- (B) Whether the location will be owned or leased;
- (C) The noncore banking activities to be conducted;
- (D) An estimate of the initial cost of the limited purpose office; and
- (E) Such other relevant information as may be required by the regulatory

authority.

(2) If the limited purpose office involves an increase in fixed assets (acquisition of real estate or construction of facilities) the bank must request prior approval for incurring these costs.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-702.3 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-702)"

23 CAR § 320-2405. Expedited, standard, and mobile branch application procedures.

(a)(1) A state bank's expedited, standard, or mobile branch application (on separate forms required by the Bank Commissioner) for authority to establish a new branch shall be filed with the commissioner.

(2) The following rules govern the procedure on such applications.

(b) Expedited, standard, and mobile branch applications.

(1) Expedited application.

(A) To file an expedited application, a bank must meet the criteria of a healthy bank as set forth by this part.

(B) The application will be processed within sixty (60) days of filing with the commissioner.

(2) **Standard application.** An application not filed as an expedited application will be filed as a standard application.

(3) **Mobile application.** A separate application must be filed with the commissioner for each separate county the state bank proposed to operate the mobile branch.

(c) **Fees.**

(1)(A) The sponsor or sponsors of an expedited branch application are required to pay a filing fee of three hundred dollars (\$300) as set by this part.

(B) This fee must accompany the filing of the application.

(C) The commissioner at his or her discretion may or may not require a field investigation of a branch application.

(2)(A) The sponsor or sponsors of a standard branch application are required to pay a filing fee of five hundred dollars (\$500) as set by this part.

(B) This fee must accompany the filing of the application.

(C) The commissioner at his or her discretion may or may not require a field investigation of a branch application.

(3)(A) The sponsor or sponsors of a mobile branch application are required to pay a filing fee of three hundred dollars (\$300) as set by this part.

(B) This fee must accompany the filing of the application.

(C) The commissioner at his or her discretion may or may not require a field investigation of an application.

(d) **Notice published by applicant.**

(1) The applicant, for either an expedited, standard, or mobile branch application, shall publish notice of the application in a newspaper of statewide circulation one (1) time per week for four (4) consecutive weeks prior to filing the application with the commissioner.

(2) The application may not be filed with the commissioner less than thirty (30) days from the date of the first publication, and not later than twenty (20) days after the fourth and final publication.

(3) A proof of publication must be submitted to the commissioner.

(e) **Notice by commissioner.**

(1) The commissioner shall give notice of the application to Arkansas state-chartered banks with a bank or a full-service branch currently open and operating within the market area of the proposed new branch.

(2) As set by this part, the following shall apply:

(A)(i) All state-chartered banks are required to file with the commissioner a designated officer (not to be confused with the designated agent for service of process) and email address for which service can be made on that bank for the purpose of giving notice of an expedited, standard, or mobile branch application for a new branch.

(ii) All state-chartered banks are required to file at least one (1) designated officer, and may file up to three (3), with the commissioner.

(iii) This must be filed with the commissioner by state-chartered banks currently open and operating within the State of Arkansas no later than March 26, 2007.

(iv) All new state-chartered banks open and operating after March 26, 2007, must file a designated officer and email address with the commissioner not more than thirty (30) days from the day of opening the new state-chartered bank.

(v) Failure to file this information with the commissioner will constitute a waiver of notice in regards to expedited, standard, or mobile branch applications.

(vi) Failure to file a change of designated officer and email address with the commissioner will also constitute a waiver of notice in regards to expedited, standard, or mobile branch applications;

(B) The State Banking Board defines "market area" as within the county where the applicant proposes to open the new branch;

(C)(i) "Open and operating" is determined by checking the Federal Deposit Insurance Corporation database.

(ii) Those banks having a main banking office or a branch office or offices actually open and operating as of the date of the actual filing of an application, as reflected by the Federal Deposit Insurance Corporation database, in the proposed market area will receive notice from the commissioner;

(D)(i) The commissioner will email the banks a notice of the filing of the expedited, standard, or mobile branch application.

(ii) This email will constitute as notice to the Arkansas state-chartered banks currently open and operating within the market area of the proposed new branch;

(E)(i) The commissioner will send notice to banks entitled to notice under this subsection not more than two (2) business days from the filing of the application.

(ii) The notice will include the date the application was filed; and

(F) An application for an expedited, standard, or mobile branch is considered filed on the date stamped as filed by the commissioner.

(f) **Expiration of approval.** The commissioner's order approving a branch application shall expire eighteen (18) months from the date of approval unless a request for extension has been approved in writing by the commissioner.

Authority. Arkansas Code §§ 23-46-205, 23-46-509.

Codification Notes. This section was promulgated as Section 48-703.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-703)"

23 CAR § 320-2406. Mobile branch.

The State Banking Board, in accordance with Acts 2007, No. 42, promulgates the following rules governing mobile branches:

(1) A mobile branch only conducts banking business within the same county as the main office or another full-service branch of the bank;

(2) A mobile branch may not have a single, permanent site;

(3) A mobile branch may not remain within five (5) miles of any banking location for more than two (2) business days;

(4) A mobile branch travels to various locations within the county or counties to enable customers to conduct banking business; and

(5) A mobile branch must maintain a log of operations indicating the date and specific location of each stop.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-703.2 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-701 and § 23-48-703)"

23 CAR § 320-2407. Protest.

(a)(1) A protest may be filed with the Bank Commissioner as to the filing of:

(A) A branch application;

(B) An expedited branch application; or

(C) A mobile branch application.

(2) The following rules govern such protest.

(b) **Formal protest.**

(1) Each bank, corporation, or individual must file with the commissioner a formal written protest within fifteen (15) calendar days of the actual filing of:

(A) A branch application;

- (B) An expedited application; or
- (C) A mobile branch application.

(2) The written protest must include a specific reason or reasons for protesting the application.

(3) The following fees apply:

(A) Expedited branch application.

(i) A fee of three hundred dollars (\$300) is required to be paid when filing a formal protest to an expedited branch application.

(ii) The fee must accompany or precede the formal written protest;

(B) Standard branch application.

(i) A fee of five hundred dollars (\$500) is required to be paid when filing a formal protest to a branch application.

(ii) The fee must accompany or precede the formal written protest;

and

(C) Mobile branch application.

(i) A fee of three hundred dollars (\$300) is required to be paid when filing a formal protest to a mobile branch application.

(ii) The fee must accompany or precede the formal written protest.

(c) **Letters of opposition.** Any aggrieved bank, corporation, or individual may file a letter of opposition (not an official protest) to a branch application, an expedited branch application, or a mobile branch application without incurring any liability for the fee assessed to formal protesting parties.

(d) **Date of filing.** Formal written protests and letters of opposition filed with the commissioner under this section are considered filed on the date stamped as filed by the commissioner.

(e) Public hearing at commissioner's discretion.

(1) The commissioner at his or her discretion, regardless of whether any formal protest or letters of opposition were filed, may hold a public hearing on:

- (A) A branch application;
- (B) An expedited branch application; or

(C) A mobile branch application.

(2) If a hearing is to be held, the commissioner shall give notice in a newspaper of statewide circulation once at least ten (10) days prior to the date of the hearing.

(3) Further, the commissioner shall notify by mail the party or parties filing the application and official protestant or protestants at least ten (10) days prior to the hearing.

Authority. Arkansas Code §§ 23-46-205, 23-46-509.

Codification Notes. This section was promulgated as Section 48-703.3 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-703)"

Subpart 25. [Reserved]

Subpart 26. Plan of Exchange

23 CAR § 320-2601. Authority to adopt plan of exchange — Notice — Court reporter.

(a) The Bank Commissioner requires that the bank intending to adopt a plan of exchange publish a legal notice of the commissioner's fairness hearing in a newspaper of statewide circulation.

(b) These notices must be published at least once, ten (10) days prior to the commissioner's fairness hearing.

(c) Proof of publication must be delivered to the commissioner's office.

(d) In addition, the commissioner requires that the notice of the commissioner's fairness hearing be included in the proxy material mailed to the stockholders of the

bank at least ten (10) days prior to the date of the stockholders meeting at which the plan of exchange will be voted upon.

Authority. Arkansas Code § 23-46-205.

Codification Notes. This section was promulgated as Section 48-601.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-48-601)"

23 CAR § 320-2602. Court reporter required.

(a) The Bank Commissioner requires that the bank arrange for a court reporter to be present to transcribe the proceedings of the commissioner's fairness hearing.

(b) The bank is responsible for the fees and costs of the court reporter and transcript of the proceedings.

Authority. Arkansas Code § 23-46-205.

Subpart 27. Dissolution and Liquidation

23 CAR § 320-2701. Execution and filing articles with the State Bank Department — Certificate of dissolution — Fees.

When the dissolution of an Arkansas state-chartered bank has been completed, the receiver shall file articles of dissolution with the State Bank Department in accordance with the procedures as set out by state statute and accompanied by a filing fee of two hundred dollars (\$200).

Authority. Arkansas Code §§ 23-46-205, 23-46-509.

Codification Notes. This section was promulgated as Section 49-118.1 of the State Bank Department Rules prior to codification into the Code of Arkansas Rules.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "(Reference A.C.A. § 23-49-118)"

23 CAR § 320-2702. Voluntary liquidation.

Applications for the voluntary liquidation of an Arkansas state-chartered bank shall be accompanied by a filing fee of two hundred dollars (\$200).

Authority. Arkansas Code §§ 23-46-205, 23-46-509.

23 CAR § 320-2703. Voluntary liquidation — Surrender of charter.

Prior to accepting the surrender of any bank charter, applicant must provide the Bank Commissioner with evidence satisfactory to him or her that all deposits and trust accounts (if any) have been:

- (1) Sold;
- (2) Surrendered;
- (3) Transferred; or
- (4) Terminated.

Authority. Arkansas Code § 23-46-205.