

ALABAMA SECURITIES COMMISSION POLICY ON SALES OF SECURITIES OF DE NOVO BANKS

The Alabama Securities Act requires that any security sold in this state must be registered with the Commission, unless the security qualifies for a statutory exemption from registration. The Act provides for a number of exemptions, including an exemption for "any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States or any bank . . . organized and supervised under the laws of this state." See Section 8-6-10(3) (Code of Ala. 1975). This exemption was further expanded by the National Securities Markets Improvement Act which provided federal "Covered Security" status for any federal chartered bank or a bank organized under the laws of any state. It is the Commission's position that this exemption, as well as the status of covered security is not available for securities issued by a bank in the process of organization. If any securities are to be sold to generate funds that will be used or placed at risk before the formal incorporation of the bank, then the sale of those securities must have an exemption other than Ala. Code § 8-6-10(3) or must be registered under the Alabama Securities Act, provided that any issuer who complies with the following procedures will be considered to be qualified for the exemption at Ala. Code § 8-6-10(3)

1. All funds from the offering are placed into escrow with an insured, third-party depository institution, as discussed in provision (4) below, such funds will not be considered to be "used" or "placed at risk."
2. The bank in organization may not accept any funds from an offering of securities in reliance on this policy statement until it has received a determination from the appropriate primary federal or state regulator, as the case may be, that its application is substantially complete.
3. The bank in organization must utilize an offering circular and comply with the FDIC's or other relevant federal banking regulator's statement of policy regarding the use of offering circulars in connection with public distribution of bank securities.
4. All proceeds of an offering conducted in reliance upon this policy statement by a bank in organization must be held in escrow with an insured, third-party depository institution until after the bank in organization has received the certificate of the Superintendent of Banks pursuant to Ala. Code § 5-5A-6 authorizing the filing of the certificate of incorporation or comparable authorization from other appropriate primary federal or state regulators. If the de novo bank does not receive such authorization within one year after commencement of the offering, the escrowed funds plus interest accrued, if any, must be returned in full to investors. The requirement that proceeds be held in escrow and the conditions for the proceeds' return must be set forth in both the offering circular and the subscription agreements utilized in the offering.

5. Effective May 1, 2003, at least ten (10) business days prior to the commencement of an offering in reliance upon this policy statement, the bank in organization shall provide the Commission copies of the offering circular and subscription agreement which it proposes to use in the offering and copies of the Interagency Biographical and Financial reports theretofore provided to bank regulatory authorities for each person who is expected to effect or attempt to effect offers or sales of the securities. The Commission staff will perform a disclosure review of the materials to be used in the offering and review the disciplinary history of any persons expected to effect or attempt to effect offers or sales of the securities. The exemption will be effective if the Commission staff has not entered into a proceeding or issued a stop order within ten(10) business days of the filing.
6. Those persons for whom notification is provided who will effect or attempt to effect offers or sales of the securities shall not be required to be registered as a broker-dealer agent or restricted agent and will not be required to complete NASD securities examinations subject to the following:
 - a. A full background check has been completed by the primary federal or state regulator within the previous twelve (12) months
 - b. Notification of such persons participation in the offering is received by the Commission staff no later than ten (10) business days prior to the commencement of the offering.
 - c. No commission or other remuneration shall be paid, either directly or indirectly, primarily for the solicitation of the sale of the de novo bank securities.
7. Nothing herein affects or impairs the applicability of the anti-fraud provisions of the Alabama Securities Act.