



Guidance Regarding Department Approval of Amendments to an Institution's Articles of Incorporation

On October 14, 2008, the U.S. government announced a series of initiatives to strengthen market stability, improve the strength of financial institutions, and enhance market liquidity. Treasury announced a voluntary Capital Purchase Program to encourage U.S. financial institutions to build capital to increase the flow of financing to U.S. businesses and consumers and to support the U.S. economy. Under the program, Treasury will purchase up to \$250 billion of senior preferred shares on standardized terms.

Under Treasury's Capital Purchase Program, eligible institutions will be able to sell equity interests to Treasury in amounts equal to 1 percent to 3 percent of the institutions risk-weighted assets. These equity interests will constitute Tier 1 capital for the eligible institutions.

Application guidelines have been published. The deadline to apply is November 14, 2008. All funds are scheduled to be dispersed by year end.

The Department of Banking and Finance (Department) would recommend that Georgia state-chartered financial institutions consult with their legal counsel to discuss how they might participate in the Treasury program.

The Department is providing this guidance to respond to questions relating to the issuance of preferred stock by Georgia state-chartered financial institutions which will be necessary to participate in the program.

If the Articles of Incorporation of a Georgia state-chartered financial institution require amendment prior to the issuance of preferred stock according to O.C.G.A. § 7-1-511, **the Department will not require that financial institutions seek approval from the Department for amendments to their Articles of Incorporation to facilitate the issuance of preferred stock to the U.S. government associated with participation in the Treasury program.** Note that a Shareholder meeting to approve the issuance of preferred stock could qualify as a "special meeting" under O.C.G.A. §7-1-6 and require as little as ten (10) days notice. **De Novo institutions would still be required to submit changes to their business plan for Department review and approval. The Department's review of business plan changes related to participation in the Treasury program will be expedited.** De Novo institutions interested in participating in the Treasury program are advised to proceed with the Treasury application process in order to meet the November 14th deadline.

Again, the Department would urge financial institutions to consult with legal counsel and address this stock issuance issue, as well as any other impediments, as quickly as possible in order to take advantage of the Treasury program if the institution determines that participation is in its best interests.