

INTERPRETIVE LETTER 2000-02 (January 12, 2000)

Scope and effect of “Super Wild Card” enacted by the “Banking on Illinois Act.”

This letter is in response to your inquiry concerning the scope and effect of the “Banking on Illinois Act” and the resulting “Super Wild Card.” Illinois state banks for more than 30 years have enjoyed parity with national banks pursuant to Section 5(11) of the Illinois Banking Act. Section 5(11) provides that notwithstanding any provision of Illinois law, state banks are permitted to perform any act or make any investment permitted for a national bank, subject to the same limitations and conditions that a national bank would have to observe. In 1998 parity with insured savings associations¹ was added by enactment of Section 5(25).

The Banking on Illinois Act² was enacted in 1999 to establish a more favorable environment for chartering and operating banks in the State of Illinois. The Act extended the powers of Illinois state chartered banks to provide what have been described as “Super Wild Card” powers by amending Section 5(25) of the Illinois Banking Act to permit an Illinois state-chartered bank to offer any product or service that is permitted for any state bank in any other state under its applicable law.³ If an Illinois state-chartered bank exercises these expanded parity powers to engage in an activity permitted in another state, they are subject to the same limitations and restrictions that are applicable to a state chartered institution in that state. The new Super Wild Card may not be used to expand branching authority or to expand the authority to conduct real estate brokerage services. Any expanded insurance powers are still subject to the provisions of the Financial Institutions Insurance Sales Law and the Illinois Insurance Code.

¹ “Insured savings associations” include state and federal savings banks and savings and loan associations.

² House Bill 2204; Public Act 91-330

³ (25) Notwithstanding any other provisions of this Act or any other law, to offer any product or service that is at the time authorized or permitted to any insured savings association or out-of-state bank by applicable law, provided that powers conferred only by this subsection (25): (a) shall always be subject to the same limitations and restrictions that are applicable to the insured savings association or out-of-state bank for the product or service by such applicable law; (b) shall be subject to applicable provisions of the Financial Institutions Insurance Sales Law; (c) shall not include the right to own or conduct a real estate brokerage business for which a license would be required under the laws of this State; and (d) shall not be construed to include the establishment or maintenance of a branch, nor shall they be construed to limit the establishment or maintenance of a branch pursuant to ~~subsection~~ (11).

Super Wild Card Powers

Based upon a review conducted by the Office of Banks and Real Estate (the “Agency”), subject to limitations and conditions described later, we conclude that Illinois state banks possess the following new “Super Wild Card” powers:

I. Insurance Underwriting⁴

Illinois state-chartered banks, subject to the Illinois Insurance Code and to conditions described later, may conduct general insurance underwriting activities relying upon the following statutory authorities:

A. **South Dakota** Section 51A-4-4 of the South Dakota Financial Code, which provides that “A bank is expressly empowered, directly or through subsidiaries, to engage in all facets of the insurance business.”⁵

B. **Utah** Section 7-1-901 of the Utah Financial Institutions Act, which permits any state authorized depository institution, directly or indirectly, through a subsidiary or affiliate, to engage in insurance business.

C. **Hawaii** Sections 412:5-205.5 and 412:5-205.6 of the Hawaii Financial Code, effective June 1, 2000, permit a state bank in the state of Hawaii to underwrite insurance.

II. Securities Brokerage Services

Illinois state-chartered banks have long been empowered to conduct full service securities brokerage operations through a subsidiary. However, applying the new Super Wild Card may allow Illinois state-chartered banks to conduct full service securities brokerage activities directly in the bank relying upon the following statutory authorities.

A. **Iowa** Section 524.825 of the Iowa Financial Code authorizes a state bank to directly engage in securities activities including: 1) issuing, underwriting, selling or distributing stocks, bonds, debentures, notes, interests in mutual funds or money-market-type mutual funds, or other securities; 2) organizing, sponsoring and operating one or more mutual funds; and 3) acting as a securities broker-dealer licensed under Chapter 502 of the Iowa Financial Code.

B. **Delaware** Title 5, Section 761 of the Delaware Code permits state banks to engage in the sale, distribution, and underwriting of and dealing in, stocks, bonds, debentures, notes and other securities.

⁴ Note: While insurance underwriting appears to be authorized in the statutes of these states, we are aware of no state bank that has exercised this authority, so that an Illinois state bank seeking to exercise this power may be the first to need to seek FDIC approval for this activity.

⁵ The unqualified authority to engage in all facets of insurance business established under Section 51A-4-4 of the South Dakota Financial Code also provides authority for a bank to engage in the underwriting of title insurance.

C. **Michigan** Section 23.710(151f) of the Michigan Financial Code also authorizes a state bank to provide brokerage services to offer, sell or purchase a security or commodity contract.

III. Corporate Debt Underwriting/Corporate Equity Underwriting⁶

Illinois state-chartered banks are authorized to underwrite corporate debt securities or debentures by applying the Super Wild Card power to the following statutes of other states.

A. **Tennessee** Section 45-2-1802(6) of the Tennessee Banking Act provides that “[a]n authorized state bank, directly or indirectly through a subsidiary may engage in the sale, distribution, and underwriting of, and dealing in, commercial paper issued by any entity.”

B. **Delaware** Title 5, Section 761 of the Delaware Code provides general power for state banks to engage in the sale, distribution, and underwriting of and dealing in, stocks, bonds, debenture, notes and other securities.

IV. Real Estate Equity Participation

Several states statutes provide authority for state-chartered banks to engage in the purchase of or investing in real estate.⁷

A. **Maine** Title 9B, Section 419-A of the Maine Financial Code provides broad authority when it states that “[i]n addition to real estate owned for offices and facilities pursuant to chapter 33, a financial institution may acquire all property, real, personal and mixed, by mortgage, foreclosure, purchase or by any other means and may hold the property for investment purposes and may improve, develop, lease, contract, convey and otherwise exercise control over the property.”

B. **West Virginia** West Virginia authorized equity investment in real estate under Sections 31A-8C-1 and 31A-8C-2 of their state banking statute.

C. **Virginia** Section 6.1-59.1 of the Virginia Banking Act states that in addition to the ownership of other real estate, a bank may invest in real estate “(i) for the purpose of producing income or for inventory and sale or (ii) for improvement, including the erection of buildings thereon, for sale or rental purposes. Said bank may hold, sell, lease, operate or otherwise exercise the right of an owner or such property.”

V. Travel Agencies/ Sale of Common Carrier Tickets

Illinois state-chartered banks that possessed travel agencies as of January 1, 1991 were “grandfathered” and permitted to retain these travel agencies by provisions of Section 5(22) of the Illinois Banking Act.

⁶ Note: OCC Conditional Approval #331, November, 1999 approved limited debt and equity securities underwriting in an operating subsidiary. Such “conditionally approved” activities exercised by Illinois state banks require approval by the Office of Banks and Real Estate.

⁷ **Note:** Investments and equity participation in real estate in each of these states may be limited to a specific amount of bank assets and capital, and an Illinois bank using the Super Wild Card and that state s statute must comply with those limits.

Now all state-chartered banks in Illinois may own and operate a travel agency and engage in the sale of common carrier tickets as a result of the following statutory authorities:

A. **Ohio** Section 1109.64 of the Ohio Financial Code specifically authorizes a state bank to both operate a travel agency and to engage in the sale of common carrier tickets.

B. **New York** Article III, Section 96(13) of the New York Financial Code provides authority to “reserve or order transportation, travel accommodation or other travel services.”

C. **South Dakota** Section 51A-4-3 of the South Dakota Financial Code permits a bank to operate a travel agency.

VI. Agency/Unaffiliated Institutions

Illinois state-chartered banks have the explicit authority to conduct agency transactions on behalf of affiliated institutions. However the following states provide similar authority with respect to non-affiliated institutions.

A. **Maine** Title 9B, Section 418 of the Maine Financial Code provides that “[a] financial institution or a financial institution not authorized to do business in this state may act as an agent for a financial institution, out of state financial institution, a financial institution organized under the provisions of law of another state, federal association or national bank in accordance with this section.”

B. **Wisconsin** Section 221.0301(8) of the Wisconsin Banking Act allows state-chartered banks to contract with one or more other depository institutions to provide banking and financially related services.

Implementing Super Wild Card Powers

I. Procedures to Exercise Super Wild Card Powers

If a state bank seeks to exercise a power pursuant to the Super Wild Card, it is required by Section 24 of the Federal Deposit Insurance Act to obtain permission from the FDIC if the state-chartered bank seeks to engage in activities as principal or to invest in certain equity securities that are not permissible for a national bank. Procedures to obtain this permission are described in 12 Code of Federal Regulations Part 362.

II. Limitations and Conditions

If a state bank seeks to exercise Super Wild Card powers based upon another state’s statutes, the Illinois state bank should document that the authority still exists when the Illinois bank proposes to commence the activity and be prepared to comply with the conditions that a state bank in that state would have to follow. Where the other state’s statute requires approval by the regulator in that state to engage in particular activities, such approval authority with respect to an Illinois state bank will be exercised by the Office of Banks and Real Estate. If the activity requires a license, such as an insurance or securities license, the state bank must also obtain that license.

III. Caveats

Banking statutes in Illinois and other states undergo revisions on a frequent basis. The Agency, in cooperation with the Conference of State Bank Supervisors, will continue to monitor legislation in other states to identify additional powers that may be authorized for Illinois state-chartered banks. However, because of these frequent changes to state banking statutes, a state bank wishing to exercise Super Wild Card powers should check with the bank's counsel before exercising a Super Wild Card power. Additionally, as federal agencies are promulgating rules pursuant to the recently enacted Gramm-Leach-Bliley Financial Modernization Act of 1999, banks should consult with bank's counsel to determine compliance with these issuances.

IV. Powers Granted to National Banks and Insured Savings Associations

From time to time the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) interpret statutes related to national banks and federal savings associations granting authority for financial institutions under their supervision to engage in additional activities. Illinois state banks may automatically engage in any activities permitted for national banks without seeking approval from the FDIC. Illinois state chartered banks seeking to engage in powers permitted to insured savings associations will need to obtain approval of the FDIC under Part 362.

V. Powers Pursuant to Section 3 of the Illinois Banking Act

Finally, before considering whether a particular activity is authorized under Sections 5(11) or 5(25), Illinois state banks wishing to exercise new powers should also consider whether Section 3 of the Illinois Banking Act may authorize the activity as part of the "general banking business." The Office of Banks and Real Estate has regularly concluded that a new activity is a power that is part of the banking business without resorting to wild card interpretation. Additional support for a Section 3 interpretation is provided by the provision in the Banking on Illinois Act that the Illinois Banking Act be liberally construed⁸ to effect the purpose of enhancing the attractiveness of establishing and operating state banks in Illinois.

Should you have any questions related to this interpretive letter, please do not hesitate to contact the Agency.

⁸ Section 15 of Public Act 91-330.