INTERPRETIVE LETTER No. 01-02 (April 26, 2001)

A loan to an LLC is not aggregated with a loan to another commonly owned LLC, provided each has sufficient collateral and income to justify the loans.

This is in response to your inquiry to the Office of Banks and Real Estate ("Agency") asking whether a loan from * ("Bank") to a limited liability company ("LLC") would be aggregated with a loan to a separate LLC with the same members. Based upon the information you have provided, aggregation of the loans would not be required. Additionally, the loans to the respective LLCs would not be aggregated with the members' personal borrowings.

Your correspondence indicates that the Bank proposes to finance two construction projects organized in separate LLCs. Each LLC would be comprised of unique ownership, tenants, and collateral. The primary source of repayment for each loan would be lease income generated by different commercial properties held by the particular LLC. * ("Member 1") and * ("Member 2") would be members of both LLCs. The loans would be secured by the personal payment guarantees of the members during the construction phase, but those guarantees would be limited to the member's respective ownership interest in the LLC during the "end loan" period.

Section 32 of the Illinois Banking Act ("Act") prohibits the Bank from permitting any person's outstanding liabilities to exceed the legal lending limit. [1] The Limited Liability Company Act defines the term "person" to include LLCs and establishes that an LLC is a legal entity that is distinct from its members.[2] The circumstances under which a loan to an LLC would be aggregated with the borrowings of another LLC or with its members are set forth in the Agency Rule on loan aggregation. [3] In general, loans or extensions of credit to different persons will be aggregated where the credit worthiness of only one person can justify the loans. Relevant factors in this determination are: 1) Will the borrower have the capacity from his, her, or its own assets and operations to repay the loan, or is the source of repayment the other person; and 2) Were the proceeds of the loan used for the primary benefit of the other person without a corresponding economic benefit to the borrower?

The Bank has indicated that the LLCs would be comprised of unique and distinct assets. Your correspondence also indicated that the proposed loans would be based on the value of and the income generated by the properties held by the respective LLCs. The Bank would not be relying on the creditworthiness of only one LLC, nor would it be relying on the net worth of the individual members in making the loans. Provided each LLC has sufficient collateral and anticipated income to service its debt, without relying on the other LLC or the individual members to obtain or repay the loan, the loans would not be aggregated together or with the members' individual borrowings.[4]

The personal guarantees provided by Member 1 and Member 2 would, however, be subject to the limits set forth in Section 32 of the Act. Pursuant to Section 32(5), a person may act as an accommodation party or guarantor for payment with respect to evidences of indebtedness not to exceed 20% of the bank's unimpaired capital and surplus. Section 32 also limits the total liabilities of any one person for money borrowed or "otherwise" to no more than 25% of

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1 205 ILCS 5/32.

2 805 ILCS 180/1-5; 805 ILCS 180/5-1(c) (A limited liability company is a legal entity distinct from its members); 805 ILCS 180/10-10(a) (A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager).

3 38 Ill. Admin. Code § 330 (Subpart B).

4 *See* Interpretive Letter 95-10, (October 2, 1995) (A loan to a limited liability company is not aggregated with the individual borrowings of a company member unless the bank is actually looking to the member for repayment).

the deposits of the bank and 50% of the bank's unimpaired capital and surplus. Guarantees made pursuant to Section 32(5) are included in the term "otherwise" for purposes of determining the total liabilities outstanding. Your correspondence did not indicate whether Member 1 or Member 2 has other personal borrowings from the bank. If that is the case, the Bank must ensure that the combined personal borrowings and guarantees of the respective members will not exceed 25% of the deposits of the bank and 50% of the bank's unimpaired capital and surplus.

Finally, while the loans described in this letter may not be a violation of the Bank's lending limit, they may be subject to criticism as a concentration of credit. This is an issue that would have to be addressed by the examiners at the appropriate time.