

## Interpretive Letter 2002-02 (March 11, 2002)

### **Bank may engage in a contractual deposit-taking relationship with a nonaffiliated bank, subject to certain conditions.**

This is in response to your letter in which you asked the Office of Banks and Real Estate (“Agency”) whether \*\*\* (“Bank A”) may offer its deposit account customers the option of using \*\*\* (“Bank B”) branches to make certain deposits. Based on the information you have provided, Bank A may offer the proposed deposit-related services, provided it satisfies the conditions set forth in this letter.

Bank A has a correspondent banking relationship with Bank B, which has banking offices at locations that are more convenient to some Bank A customers. Under your proposal, your customers would have the option of taking cash and check deposits to convenient Bank B locations. Those funds would be deposited into a correspondent account at Bank B in the name of Bank A. At the end of each business day, Bank A would obtain a consolidated statement of these deposits, and based on that statement, it would then credit each customer’s account at Bank A.

In assessing your proposal, we first address the question of whether the proposed deposit relationship will cause Bank B to be considered a branch of Bank A. The federal bank regulators have previously opined that banks that engage in contractual deposit taking services will not be considered branches of the banks with which they contract.<sup>1</sup> In addition, several states have enacted statutory provisions that allow such agency relationships and expressly state that an “agent” bank will not be considered a branch.<sup>2</sup> As a result, we have also concluded that Bank B would not be considered a branch of Bank A for the proposed activity.

We next turn to the question of whether the relationship is authorized under the Illinois Banking Act (“Act”). Section 5(25) of the Act would permit the proposed activity.<sup>3</sup> Section 5(25) of the Act authorizes a state bank to provide any product or service that an out of state bank may provide, subject to the same limitations and restrictions applicable to the out of state bank engaging in the activity. A number of states authorize financial institutions to engage in written agency relationships with other, nonaffiliated financial institutions. For instance, the State of Maine allows a financial institution to receive deposits as agent for another financial institution, provided the agency relationship is on terms that are consistent with safe and sound banking practices.<sup>4</sup> The State of Texas also allows a bank to act as agent for a nonaffiliated bank without either institution being considered a branch of the other, provided the banks enter into a written, contractual arrangement for authorized services on terms that are consistent with safety and soundness.<sup>5</sup> Based on these and other similar state statutes, it is clear that Bank A may engage in a contractual deposit-taking agency relationship with Bank B.

Although there is statutory authority for Bank A to engage in the proposed activity, given the potential for customer confusion, you should disclose to customers that Bank A and Bank B are not affiliated institutions and that funds submitted at Bank B locations will not be immediately credited to the customer’s

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1 See FDIC Advisory Letter 93-57 (August, 1993); OCC Interpretive Letter 610 (October, 1992).

2 Title 9-B M.R.S.A. §418; Texas Finance Code §59.005.

3 205 ILCS 5/25.

4 Title 9-B M.R.S.A. §418.

5 Texas Finance Code §59.005.

account at Bank A. Further, the contractual relationship between Bank A and Bank B must adequately address the nature of the services to be provided and the rights and responsibilities of the parties, consistent with safe and sound banking practices. Bank A should also keep accurate and current records of all transactions, and it should ensure that both parties maintain full compliance with all legal requirements applicable to the transactions, including financial privacy laws, anti-money laundering laws, and Federal Reserve Board Regulation CC. Finally, Bank A should make certain that customers are aware of the federal deposit insurance guidelines as they relate to funds submitted at Bank B locations, and if you have not already done so, you should obtain the input and approval of the Federal Deposit Insurance Corporation regarding the proposed transactions.

Provided you take the above-mentioned precautions, Bank A may engage in the proposed deposit-taking activity described in your letter.