

## Interpretive Letter 2002-07 (June 11, 2002)

### **Rescinded and Superseded by P.A. 093-620**

**A state bank may purchase and hold the minimum amount of Federal Home Loan Bank stock in order to become a member. A state bank may also purchase and hold Federal Home Loan Bank stock in excess of the minimum required for membership, but only in limited circumstances and subject to the same conditions and limitations imposed on a national bank.**

The Office of Banks and Real Estate has recently received inquiries as to whether a state bank's investment in Federal Home Loan Bank ("FHLB") stock is subject to limitations. Specifically, we have been asked to determine if a state bank may purchase and hold FHLB stock in excess of the minimum amount required to become a member or maintain membership.

Under the Federal Home Loan Bank Act, a state-chartered bank is eligible for FHLB membership, provided it satisfies the requirements of the statute, including the minimum required stock purchase.<sup>1</sup> The Illinois Banking Act ("Act") authorizes a state bank to purchase FHLB stock in order to become a member.<sup>2</sup> Although the Act does not explicitly authorize a state bank to invest in FHLB stock, both Section 3 and Section 5(11) of the Act would authorize the minimum stock purchase required for membership.<sup>3</sup> FHLB membership is clearly incidental and germane to the traditional banking activity of funding mortgage loans and purchasing residential housing finance assets. In addition, Section 5(11) provides that a state bank may "do any act and own, possess, and carry as assets property of the character, including stock, that at the time is authorized or permitted to national banks..., but subject always to the same limitations and restrictions as are applicable to national banks ...". Since a national bank is authorized to purchase and hold the minimum amount of stock required for membership in an FHLB, a state bank would be authorized to do the same.

In limited circumstances, a state bank may also acquire and retain FHLB stock in excess of the minimum required for membership. The OCC authorized such additional purchases of stock in Interpretive Letter 755 (OCC IL 755).<sup>4</sup> However, those additional investments were limited to purchases that would facilitate plans, as documented in the bank's business plan or other similar documents, to fund residential housing finance assets. Although OCC IL 755 authorized a national bank to acquire additional FHLB stock beyond the minimum requirement, it specifically warned that the bank must demonstrate that the additional acquisitions are part of a business plan to expand its mortgage business by funding or purchasing residential housing finance assets. Pursuant to Section 5(11) of the Act, a state bank may purchase and hold FHLB stock in excess of the minimum required for membership, but only as part of a plan to expand the bank's mortgage business and subject to the conditions and limitations set forth in OCC IL 755.<sup>5</sup>

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1 12 U.S.C. 1424; 12 U.S.C 1426(c); 12 C.F.R. 931.3.

2 205 ILCS 5/1 et seq.

3 205 ILCS 5/3; 205 ILCS 5/5(11).

4 OCC Interpretive Letter 755 (October, 1996).

5 Although insured savings associations do not have specific limitations on the amount of FHLB stock in which they may invest, state banks may not borrow that as authority to make additional purchases of FHLB stock. Section 5(25) of the Act (Super Wild Card) only allows a state bank to offer any "product or service" authorized or permitted to an insured savings association. It does not provide a state bank with the authority to do any act or make any investment that an insured savings association can make. As a result, the Super Wild Card is not applicable to these circumstances.