

**Interpretive Letter No. 2002-08 (June 12, 2002)**  
**Board of Directors may use Electronic mail to conduct business of the Bank**

The { } has requested an opinion from The Office of Banks and Real Estate (the “Agency”) as to whether state chartered banks can conduct board of directors meetings via E-mail. The Office of Thrift Supervision (the “OTS”) has issued Letter P-2001-3 granting federal savings associations the right to use E-mail to convene board of directors meetings. The Agency has also issued a statement regarding conducting meetings using electronic means. After reviewing all of the pertinent information the Agency approves the use of E-mail to complete or ratify basic corporate actions.

The OTS Regulations at 12 CFR Part 555 allow federal savings associations to use electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity. The Internet is included as an electronic means. The OTS points out that board of directors meetings have been allowed to be held via telephone and other telecommunications devices for some time. Additionally, directors may take action without the benefit of a meeting if they provide written consent signed by all directors specifying the proposed action. According to the OTS, allowing board meetings to be conducted by E-mail is a logical extension of those activities. The OTS states that even though approval to conduct meetings by E-mail is granted, full and open discussion, interaction of the board members and sharing of opinions regarding all significant issues before them should not be abandoned. The Agency agrees.

The Agency has adopted a policy to allow directors to meet “through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can communicate with each other.” Policy Statement 1003. This policy does extend to E-mail meetings. Using the Internet to register affirmative or negative votes is convenient. It is comparable to the provisions in state and federal regulations that allow directors to adopt resolutions without the benefit of a meeting if all of the directors agree in writing.

The Agency concludes that the use of E-mail is authorized as a means of conducting corporate activities only if the board has had the opportunity to engage in full and complete discussion of the issues that come before the board. This discussion could be achieved by electronic means if the by-laws of the State chartered bank allow the use of electronic communication; the board has the means to identify the electronic identity of its members; and, each board member has access to and is proficient in using E-mail. Pursuant to 205 ILCS 5/43 of the Illinois Banking Act, if the board is unanimous in proceeding with a specific corporate action that action can be taken without the benefit of a meeting if all of the members unanimously consent in writing. E-mail can be used and substituted for the writing requirement.

The board should establish complete records. At a minimum the board should retain a copy of all E-mails. The board should also take steps to insure that E-mail

discussions remain safe from unauthorized interception. When confidential information is discussed the board should use an encryption program.

The board must determine whether a particular corporate issue requires an in person discussion between board members as opposed to an E-mail discussion. It is the Agency's position that personal attendance at board meetings should be the rule and not the exception.