

INTERPRETIVE LETTER – 08-02 (JUNE 5, 2008)

Missouri Higher Education Loan Authority bonds are subject to lending and investment limitations to the extent that the bonds are not secured by guarantee of the United State Department of Education.

Please accept this correspondence as confirmation that the Division of Banking (“Division”) has received and reviewed your December 18, 2007 electronic communication. In your communication you requested that the Division resolve three issues connected to * (the “Bank”) investment in Missouri Higher Education Loan Authority (“MOHELA”) bonds. First, you asked whether MOHELA bonds are qualified investments. Second, you asked whether the bonds are categorized as municipal revenue bonds. Third, you asked whether MOHELA bonds are subject to an investment limitation. In a telephone conversation on March 3, 2008, you indicated to the Division that you had resolved the first two questions; however, the third issue remains outstanding. The following response will therefore be restricted to the single unresolved question. For the reasons stated below, we conclude that MOHELA bonds are subject to lending and investment limitations to the extent that the bonds are not secured by guarantee of the United States Department of Education.

A brief description of MOHELA and the bonds it has issued is in order. You have stated that you understand MOHELA to be “quasi public entity” with its powers granted by the State of Missouri, but with the underlying assets having the credit support of a federal guarantee. To that statement the Division notes several additional clarifying factors. MOHELA is an established public instrumentality and body corporate. It owns and services student loans established by the Higher Education Act under the Federal Family Education Loan Program (FFELP); a portion of such loans are guaranteed by the federal government. MOHELA also purchases supplemental (non-FFELP) loans. It issues bonds (taxable and tax-exempt) to finance the purchase of student loans. The bonds serve to fund programs designed to assure that all eligible postsecondary education students have access to student loans that are guaranteed or insured, or both. MOHELA is authorized to issue certificates of guarantee covering student loans by eligible lenders which meet specific requirements¹. In this instance, the Bank is seeking to invest in MOHELA issued bonds.

The Illinois Banking Act,² (the “Act”) controls the limitations placed on a State bank’s investment in marketable securities. In general, “Any State bank may purchase for its own account marketable investment securities without regard to any other liability to the bank of the issuer, maker, obligor, or guarantor of any marketable investment securities, but the total amount of the marketable investment securities of any one issuer, maker or obligor held by the bank or for its account at any one time shall not exceed 20% of its unimpaired capital and unimpaired surplus³.” Without further provisions, the Bank is subject to this investing limit. However, additional language modifies the above clause in special circumstances to trigger an exemption to loan and investment limits.

¹ Mo. Rev. Stat. § 173.110.1 (2007)

² 205 ILCS 5/1 et seq.

³ 205 ILCS 5/33

The Act lists multiple exemptions to the aforementioned loan and investment limits. Section 35(2) exempts “Loans to or obligations of any person...to the extent that the same shall be secured or covered by guaranty or by commitment or agreement to take over or purchase, made by any Federal Reserve Bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned, directly or indirectly, by the United States⁴.”

MOHELA bonds are composed of assets partially guaranteed by the Department of Education. In accordance with Section 35(2), to the extent that the bonds are guaranteed, lending limits do not apply. For example, if 98% of a \$100,000 MOHELA bond is secured by a guarantee from the Department of Education, then \$98,000 would be exempt from investment limit calculations. The remaining \$2,000 is subject to the limitations provided in Section 33. It should be noted that without special circumstances⁵, loans guaranteed by the state of Missouri *do not qualify* for the above listed investment exemption. Therefore, it is critical that as the Bank calculates its investment exemption, it isolates the percentage of bond monies secured by the Department of Education, crediting the remainder against the Bank’s investment limits.

Regardless of statutory allowances, safety and soundness principles must dictate your institution’s investment decisions. In recent weeks, the Division has determined that the above investments present significant liquidity and earnings concerns⁶. We strongly recommend that you fully understand all aspects of these investments prior to committing any resources.

Please be advised that the Division’s position is limited to and based specifically on the representations set forth in this letter. Any changes in the facts and circumstances surrounding the holding of MOHELA bonds might change this position. Furthermore, this position applies only to the holding of those bonds referenced above, and any future requests of a similar nature will be reviewed on a case-specific basis.

⁴ 205 ILCS 5/35(2)

⁵ An Illinois state-chartered bank may elect to utilize “Super Wild Card” powers set forth in 205 ILCS 5/5(25) of the Illinois Banking Act to permit it to offer (or engage in) any product or service that is permitted for any state bank in any other state under its applicable law. If an Illinois state-chartered bank exercises these expanded parity powers to engage in an activity permitted in another state, it is subject to the same limitations and restrictions that are applicable to a state chartered institution in that state.

⁶ Nicklaus, David. "Failure of Wall Street's auction-rate bonds hits Main Street" St. Louis Post-Dispatch 13 April 2008.

<http://www.stltoday.com/stltoday/business/columnists.nsf/davidnicklaus/story/7402C9ABE5038782862574290008938C?OpenDocument> (accessed May 6, 2008).