

## **INTERPRETIVE LETTER 83-1 (NOVEMBER 30, 1983)**

### **State bank may act as futures commission merchant and establish subsidiary to act as futures commission merchant.**

This is in response to your request for an opinion regarding whether it is permissible for the \*, an Illinois State chartered bank, to establish a wholly-owned subsidiary to perform the activities of a Futures Commission Merchant ("FCM"). As indicated in your letter of October 24, 1983, the proposed subsidiary \* intends to deal in futures contracts covering bullion, foreign exchange, United States government securities, negotiable United States money market instruments and certain other money market instruments.

Section 3 of the Illinois Banking Act (Ill. Rev. Stat. 1981, ch. 17, par. 309) authorizes banks to conduct a "general banking business." Section 5(12)(c) of the Act, (Ill. Rev. Stat. 1981, ch. 17, par. 311) provides that a State bank may hold a wholly-owned subsidiary which carries on the bank's "general banking business." The issue is then raised whether executing future contracts for bullion, United States government securities and certain other money market instruments constitutes a "general banking business."

Illinois State chartered banks are permitted to, and have, engaged in future contracts in which the underlying security is considered a permissible bank investment. Accordingly, such futures trading activity appears to be "general banking business" within the meaning of Sections 3 and 5 of the Act. I also note that the Office of the Comptroller of the Currency has determined such futures activity to be "incidental to banking" under Section 24(7) of the National Banking Act, 12 U.S.C. Sec. 24 (See Comptroller's Banking Circular No. 79 (3rd revision)). Additionally, the Board of Governors of the Federal Reserve System has determined that such activity is "closely related to banking or controlling banks" under Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1843 (c)(8)). (See J. P. Morgan & Co. Incorporated, 68 Federal Reserve Bulletin 514 (1982); Bankers Trust New York Corporation, 68 Federal Reserve Bulletin 651 (1982); Citicorp, 68 Federal Reserve Bulletin 776 (1982); Bank America Corporation, 69 Federal Reserve Bulletin 216 (1983)).

The activities of futures trading may create certain types of financial risks to the subsidiary and the parent bank. It is apparent from your letter that the proposed subsidiary will become a registered futures commission merchant with the Commodity Futures Trading Commission ("CFTC") and be subject to the Commission's supervision and regulation under the provisions of the Commodity Exchange Act (7 U.S.C. Secs. 1-24). In addition, the proposed subsidiary is expected to adhere to safe and sound banking practices

including, but not limited to, maintaining adequate capitalization as required by CFTC regulations, developing acceptable internal control procedures and adherence to all applicable State and Federal laws, in particular Section 35.2 of the Act (Ill. Rev. Stat. 1981, ch. 17, par. 345).

After the approval of the CFTC has been received, please advise this Office of the date on which \* will commence business.