

INTERPRETIVE LETTER 87-1 (JANUARY 16, 1987)

Loan from unaffiliated party to purchase stock of the bank holding company which owns the bank is a "covered transaction" subject to the restrictions on loans to affiliates.

This letter addresses the permissibility of three loan transactions under Section 35.2 of the Illinois Banking Act ("the Act").

The first transaction involves an unsecured loan by a state bank to an individual, partnership, trust or corporation (the borrower), the proceeds of which will be used to buy the stock of the parent holding company of the state bank. Section 35.2 of the Act places limitations on "covered transactions" between a state bank and its affiliates. Section 35.2(a)(2) provides:

For the purpose of this Section, any transactions by a state bank with any person shall be deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of or transferred to that affiliate (emphasis added).

Thus, despite the fact that there is technically no relationship between the state bank and the borrower, the borrower is deemed to be an affiliate of the state bank under Section 35.2(a)(2) because the proceeds of the loan will be used to purchase the stock of a true affiliate (the parent holding company) of the state bank.

A "covered transaction" as the term is defined in Section 35.2(b)(7) includes a loan or extension of credit to an affiliate by a state bank. Because the loan described above does not qualify for the exemptions listed in Section 35.2(d), it must comply with the percentage limitations in Section 35.2(a)(1) and the collateral requirements in Section 35.2(c).

The second transaction involves the same facts as the first with the exception that the loan will be secured by the stock of the parent holding company of the state bank. Section 35.2(c)(4) provides that securities issued by any affiliate of a state bank are not acceptable collateral for a loan to any affiliate. As a result, this transaction would result in a violation of Section 35.2(c)(4).

The final transaction is identical to the first two except that the loan will be secured by collateral other than the stock of the parent holding company of the state bank. As long as the collateral complies with the percentages required by Section 35.2(c)(4) and the loan amount is within the limitations listed in Section 35.2(a)(1), this transaction would be permissible under the Act.

An issue was also raised as to whether it is permissible for a state bank to make a loan to a director or officer of the bank which is secured by the stock of the holding company of the bank. As long as the parent holding company derives no benefit from the proceeds of the loan, it is the position of this Agency that the loan would not be deemed to be a transaction with an affiliate under Section 35.2(a)(2) of the Act. You may wish to contact the FDIC to determine if they interpret the corresponding Section of 23A in the same manner.