

**INTERPRETIVE LETTER 88-3 (JUNE 29, 1988)**

**Mutual income fund that invests in limited partnerships engaged in general business is not a permitted investment.**

This is in answer to your letter inquiring whether an FDIC insured savings institution may invest in the current offering of \* [Fund] as part of its securities portfolio.

Permissible investments for FDIC insured state chartered banks having their principal place of business in Illinois are set forth in the Illinois Banking Act ("Act") (Ill. Rev. Stat. 1987, ch. 17, par. 301 et seq.). Section 33 of the Act provides that a bank may purchase marketable investment securities in an amount not to exceed 20% of the bank's capital and surplus. In order for a security to qualify as a "marketable investment security" for purposes of Section 33, it is the position of this Agency that the following four elements must be present:

- 1) The security must be one which can be sold with reasonable promptness at a price which corresponds to its fair value;
- 2) The security must evidence the indebtedness of another person;
- 3) The security must be in the form of a bond, note or debenture; and
- 4) The security must be an investment grade security (one rated by the investment rating services so that there is adequate evidence that the obligor will be able to perform all that it undertakes to perform in connection with the security).

Upon review of the prospectus dated \*, it is the opinion of this Agency that \* [Fund] (the "partnership") is not a proper investment for FDIC insured state chartered banks in Illinois.

First, FDIC insured state chartered banks in Illinois may not enter into partnership agreements and do not have the power to be limited partners and have an ownership interest in a business venture (Ill. Rev. Stat. 1987, ch. 17, par. 311).

Secondly, even if one could argue that the term "limited partnership" is merely a phrase used to describe those who have invested in the "securities" that comprise the partnership, such securities do not contain the four elements necessary to be deemed "marketable investment securities" under Section 33. While a limited partner's interest may be assigned or sold with the general partner's approval, the prospectus makes it clear that there is no public market for these securities and that no active market is likely to develop. In addition, the partnership interest is not in the form of a bond, note or debenture. Finally, this security is not an investment grade security rated by a security rating service.