INTERPRETIVE LETTER 90-2 (JANUARY 29, 1990)

Loans to corporation guaranteed by individual will not be aggregated with loans to individual and to partnership in which individual is general partner.

This is in response to your inquiry regarding the possible existence of a lending limit violation at * (hereafter the "Bank").
An auditor from the Bank reached the conclusion that a series of loans to the related interests of an individual should be aggregated. If aggregated, those loans would constitute a line of credit to that individual in excess of the Bank's lending limit of $400,000. The series of loans consisted of the following:

(1) $40,000 commercial loan (John Doe is primary obligor);

(2) $105,000 residential mortgage loan (John Doe is primary obligor);

(3) $50,000 loan to * partnership (John Doe is obligor as general partner);

(4) $302,000 loan to "* corporation" (John Doe is stockholder in * corporation); and

(5) guarantee of * corporation loan by John Doe, personally.

The loans described in (1) through (4) above total $497,000, an amount obviously in excess of the Bank's lending limit of $400,000. However, unless additional circumstances addressed later in this letter exist, the Commissioner would not aggregate all of those loans. Rather, John Doe's liability to the Bank for purposes of determining a lending limit violation would actually be only $195,000. John Doe is directly liable for the $40,000 loan and the $105,000 loan as a maker of those notes. As a general partner in the * partnership, John Doe is also liable for the $50,000 loan to the * partnership. The aggregation of these three loans results in John Doe's personal liability of $195,000.

The $302,000 loan to the * corporation would not be aggregated with John Doe's personal liabilities to the Bank. A corporation is a separate legal entity and its borrowings are separate and distinct from the borrowings of its shareholders. The fact that the * corporation's debt was personally guaranteed by John Doe does not automatically lead to the conclusion that the corporation's debt is to be combined with John Doe's personal debt. According to Section 32 of the Illinois Banking Act, an individual may borrow an amount up to 20% of the Bank's capital and surplus and in addition may be an accommodation party or guarantor of payment for an amount up to 20% of capital and surplus. The limit for total liabilities (e.g. for loans, guarantees, and any other liabilities) of any individual is 50% of the Bank's capital and surplus.

The conclusion expressed in this letter that the loan to the * corporation would not be aggregated with John Doe's personal indebtedness to the Bank is based only on the facts listed here. If circumstances exist which suggest that the corporation was merely a

"straw" or "nominee" borrower for John Doe and the Bank was actually relying primarily on the creditworthiness of John Doe to service the debt of the corporation, then aggregation of all of the loans might be appropriate. If the Bank is making each loan in reliance on the creditworthiness of the respective makers of the notes, the Commissioner would not aggregate the loans to those separate makers.

Finally, while the lending situation described in this letter may not be a violation of the Bank's lending limit, it might be subject to criticism as a concentration of credit. This is an issue that would have to be addressed by the examiners at the appropriate time.