INTERPRETIVE LETTER 90-4 (FEBRUARY 7, 1990)

State bank may not invest in certificates in closed-end investment company that are not "readily marketable."

This is in response to your letter regarding * (the "Trust"). In your letter, you asked whether investments in the Trust were permitted for Illinois state-chartered banks on the one hand and for corporate fiduciaries on the other.

The authority of Illinois state banks to invest in securities is governed by Section 33 (Ill. Rev. Stat. 1987, ch. 17, par. 341) of the Illinois Banking Act (hereafter "Act"). That section restricts a state bank to purchasing only "marketable investment securities" when such purchases are made for the bank's own account. Section 33 defines "marketable investment securities" to mean obligations which actually are marketable, including certificates of participation in open end investment companies which are registered with the Securities and Exchange Commission. Therefore, in order for a state bank to purchase a security for its own account, the security must actually be marketable. If a state bank intends to purchase certificates of participation in an investment company, the purchase must be in an OPEN END investment company. According to the Trust's prospectus dated June 30, 1989, and revised on November 17, 1989, the Trust is a CLOSED-END management investment company. Specifically, the prospectus mentions on pages 1 and 31 that the Trust is a CLOSED-END management investment company. Additionally, the prospectus states on pages 1 and 4 that it does not currently believe that there will be an active secondary market for the Trust shares. The prospectus also states on page 1 that the "Trust shares may not be considered readily marketable." As the Trust is a CLOSED-END management investment company and does not consider its own shares to be readily marketable, Section 33 of the Act prohibits state banks from purchasing certificates of participation in the Trust for their own accounts.

You also asked whether bank trust departments and trust companies could use the Trust as an investment vehicle for trust funds in which they had been named as trustees. Since Section 33 of the Act applies only to investments purchased by a state bank for its own account, it would not apply to this case. Corporate fiduciaries would be able to invest their clients' funds in the Trust subject to the instructions in the trust instruments as well as the "Prudent Person" Rule. That Rule states the following:

> In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for any trust heretofore or hereafter created, the trustee thereof shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital (Ill. Rev. Stat. 1987, ch. 17, par. 1675(1)).

There are no statutory limitations on the amount of client funds that could be invested in the Trust; rather, the limitations would arise from the instructions in the trust instruments as well as the application of the "Prudent Person" Rule. Corporate fiduciaries should carefully review the Trust prospectus to determine whether such an investment would be consistent with the objectives of each client's trust instrument.

[NOTE: P.A. 87-715, effective January 1, 1992, amended par. 1675(1) by replacing the "Prudent Person" rule with the "Prudent Investor" rule.]