

INTERPRETIVE LETTER 90-5 (FEBRUARY 20, 1990)

Written notice must be given to shareholders of state bank at least 30 days prior to any meeting at which a vote on a merger will take place.

I am writing in response to your letter dated * regarding the notice requirement for an annual meeting of the stockholders of a state bank where the stockholders would be asked to vote on a proposed interim bank merger which would result in a state bank.

Section 23 of the Illinois Banking Act (Ill. Rev. Stat. 1987, ch. 17, par 330) provides in part that:

To be effective...a merger which is to result in a state bank must be approved by the affirmative vote of the holders of at least two-thirds of the outstanding shares of stock entitled to vote at a meeting called to consider such action... Written or printed notice of the meeting of the stockholders shall be published and shall be given to each stockholder of record entitled to vote at such meeting at least thirty days before such meeting....

Section 23 clearly states that notice shall be given to stockholders at least 30 days before a meeting called to consider a merger. Section 23 does not distinguish between an annual meeting and a special meeting. Therefore, notice should be given to the stockholders at least thirty days before any meeting where the stockholders will be called to vote on a proposed merger.