

INTERPRETIVE LETTER 91-5 (MARCH 2, 1991)

State banks are authorized to invest in marketable investment securities, projects designed to promote the development of a community and its welfare, and collateralized mortgage obligations, subject to the criteria and limitations set forth in the Illinois Banking Act. [Note: Requirement that securities be rated in top 4 rating categories no longer applicable to public agency issues.]

I am in receipt of your letter dated *. In it, you inquired about the authority of Illinois state-chartered banks to legally purchase investments marketed by your firm.

As an answer to the checklist which you enclosed, Illinois state-chartered banks may invest in "marketable investment securities" as detailed in Section 33 of the Illinois Banking Act ("Act") (Ill. Rev. Stat. 1989, ch. 17, par. 341), a copy of which is enclosed for your review. To be a qualified marketable investment security, as established in Section 33, an issue must:

1. Be a marketable obligation in the form of a bond, note or debenture evidencing the indebtedness of a "person" as defined in Section 2 of the Act (Ill. Rev. Stat. 1989, ch. 17, par. 302), a copy of which is enclosed for your review;
2. Be an obligation identified by a certificate of participation in an investment in which an Illinois state-chartered bank could have directly invested; or
3. Be a certificate of participation in a mutual or money market fund having a portfolio consisting of investments in which an Illinois state-chartered bank could have directly invested.

Additionally, Illinois state-chartered banks may only invest in marketable investment securities which are rated in the top four rating categories by national rating services and designated as "investment grade" or a "bank quality investment." Section 33 neither approves nor disapproves investments in particular securities nor does it detail requirements for maturity dates.

In addition to marketable investment securities, an Illinois state-chartered bank may, per the authority of Section 5(21) of the Act (Ill. Rev. Stat. 1989, ch. 17, par. 311(21)), make debt or equity investments in corporations or projects designed to promote the development of a community and its welfare without the prior approval of the Commissioner's Office as long as such investments do not exceed, in the aggregate, 5% of the bank's unimpaired capital and surplus. An Illinois state-chartered bank is, of course, allowed to invest more than 5% of its unimpaired capital and surplus in such corporations or projects, but it must receive the written approval of the Commissioner's Office before so investing. A copy of Section 5(21) is enclosed for your review.

An Illinois state-chartered bank is generally allowed under Section 33 to invest in the collateralized mortgage obligations ("CMOs") of any one issuer up to a limit of 20% of the bank's unimpaired capital and surplus. Section 35 of the Act (Ill. Rev. Stat. 1989, ch. 17, par. 343) provides a complete exemption from the general Section 33, 20% investment limitation and top-four rating requirement, for CMOs issued by the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Association Corporation ("FHLMC"). A CMO which is issued by any other issuer also qualifies for complete exemption under Section 35 if it is a "mortgage related security" as defined in Section 3(a)(41)(B) of the Securities Exchange Act of 1934. To qualify for the Section 35 [Section 3(a)(41)(B) of the Securities Exchange Act] exemption as a "mortgage related security," a CMO must: (1) be secured by mortgages guaranteed by or certificates of participation issued by GNMA, FNMA or FHLMC; and (2) be rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.

When an Illinois state-chartered bank purchases detached coupons from stripped mortgage backed securities, such coupons, as investment securities themselves, must comply with the investment limitations of Section 33. To the extent that the detached coupons are secured by or guaranteed by a particular obligation as detailed in Sections 34 and 35 of the Act (Ill. Rev. Stat. 1989, ch. 17, pars. 342 and 343), they may qualify for exceptions to and exemptions from the general 20% limitation in Section 33. A copy of Sections 34 and 35 is enclosed for your review.