

INTERPRETIVE LETTER 92-11 (AUGUST 20, 1992)

Infusion of funds directly into surplus without issuance of stock or change in par value does not require a charter amendment.

We are in receipt of your letter in which you asked whether an infusion of \$100,000 into surplus at the * [Bank] constituted a charter change and, as a result, would require [Bank] to file a certificate of the amendment with this Agency. Please be advised that an increase in the surplus of [Bank], as you described, would not constitute a charter change under Section 17 of the Illinois Banking Act, Ill. Rev. Stat. ch. 17, par. 324 (1991), and therefore [Bank] would not be required to file a certificate with this Agency.

The infusion of money into a bank's surplus without a simultaneous acquisition of bank shares is not a charter change that is contemplated under Section 17(a)(2). That particular section provides that an increase in a bank's capital stock constitutes a charter change. Since no additional shares of [Bank] stock will be issued in conjunction with the proposed infusion and in fact only surplus will be affected, the transaction would not constitute a charter change under Section 17(a)(2).

As long as an increase in surplus does not result from a change in the par value of a bank's stock, the transaction would not constitute a charter change under Section 17(a)(5). That section provides that a change in the par value of a bank's stock would constitute a charter change. However, your proposed infusion of money into [Bank's] surplus would not result in a change in the par value of the bank's stock.

None of the other enumerated charter changes in Section 17(a) involve an infusion of money into surplus. Consequently, this Agency is of the opinion that the proposed infusion of money into the surplus of [Bank] would not constitute a charter change under Section 17(a).