

INTERPRETIVE LETTER 92-13 (SEPTEMBER 3, 1992)

Loans to individuals guaranteed by their corporation are each subject to the lending limit applicable to individuals, while the corporation's guarantees are aggregated for purposes of the limit on a state bank's total liabilities.

We are responding to your request for an opinion on a lending limit issue under Section 32 of the Illinois Banking Act ("Act"), Ill. Rev. Stat. ch. 17, par. 339 (1991).

As we understand the facts involved, a bank lends to commodity traders. The loans are secured by the commodity traders' interest in seats on the * [exchange]. The loans are guaranteed by a clearing firm in order to facilitate the foreclosure process if a borrower defaults. Your letter raises questions regarding the structure and limitations that pertain to these guarantees.

Before we address the limitations that apply to the clearing firm's guarantees, a preliminary issue is whether the loans to the borrowers will be deemed to be loans to the clearing firm. Section 32 of the Act and Part 330 of the Illinois Administrative Code, Ill. Adm. Code, tit. 38, ' 330, address this aggregation of loans issue. A loan to a commodity trader will be deemed to be a loan to the clearing firm that guarantees the loan if the documentation on file at the bank at the time the loan was made cannot substantiate that the commodity trader has the financial capacity to repay the loan.

Assuming that the bank is relying on the credit worthiness of each commodity trader, the next question is what limitation applies to the clearing firm acting as a guarantor for the loan. Two separate limitations apply to guarantees. If the clearing firm guarantees payment of the loans, then the total amount guaranteed for all borrowers collectively cannot exceed 20% of the bank's unimpaired capital and surplus. Whether the clearing firm issues one guarantee or individual guarantees is irrelevant for this analysis. If the clearing firm acts as a collection guarantor, then collectively the clearing firm can guaranty up to 50% of the bank's unimpaired capital and surplus.