

INTERPRETIVE LETTER 92-16 (OCTOBER 26, 1992)

State bank may invest in stock in Delaware corporation that operates an electronic funds transfer network.

This letter is in reply to your request for an interpretation by the Illinois Commissioner of Banks and Trust Companies ("Commissioner") regarding the authority for state banks, and particularly your client ["Bank"], to purchase and own common stock issued by [EFT Network]. The Commissioner believes the proposed activity is legally permissible for Illinois state chartered banks and their subsidiaries, subject to the conditions described below.

As we understand the facts, [EFT Network] is currently organized as an Illinois not-for-profit corporation whose members are national and state banks, federal and Illinois state thrifts and credit unions ("Members"). [EFT Network] operates an electronic funds transfer ("EFT") system that permits customers of a Member to obtain cash from and make deposits to asset accounts maintained with the Member and to perform other banking transactions through automatic teller machines ("ATM's") maintained by other financial institutions. [EFT Network] presently has approximately * Members who have established approximately * ATM's.

[EFT Network] proposes to change its corporate structure from an Illinois not-for-profit corporation to a Delaware stock corporation. The current Members of [EFT Network] will be permitted to exchange their membership for common stock in [New EFT Network]. [EFT Network] proposes to convert to a stock corporation because it intends to commence a point of sale ("POS") program in which a fee will be paid either by the merchant where the POS is located or by the Member that sponsors the merchant for POS transactions carried out at the merchant's retail locations. [EFT Network]'s POS operations will result in [EFT Network] receiving, for the first time, revenues from entities other than Members or other financial institutions.

Ownership of [New EFT Network] stock will be fixed at the time of reorganization based on the contributions of each Member. A [New EFT Network] stockholder ("Participant") will not be permitted to sell or otherwise transfer shares other than to another Participant or to [New EFT Network] itself. Finally, [New EFT Network] will not seek to earn a significant profit from ATM and POS revenues paid by Participants and will not own or otherwise establish ATM or POS terminals.

Section 5(12)(c) of the Illinois Banking Act ("Act") permits state banks:

To own, possess and carry as assets stock of one or more corporations which is or are engaged solely in one or more of the following businesses:

(c) carrying on or administering any of the activities excepting the receipt of deposits or the payment of checks...in which a bank may engage in carrying on its general banking business....

Ill. Rev. Stat. ch. 17, par. 311(12)(c) (1991). Section 5(12) allows state banks to share interests in corporations that engage solely in activities that the bank could engage in directly, excepting the receipt of deposits or the cashing of checks. As applied to the facts described above, Section 5(12) permits state banks to purchase and own common stock of [EFT Network], because [EFT Network] is engaged--and [New EFT network] will be engaged--in activities permitted for a state bank in the carrying on of its general banking business.

The establishment and maintenance of ATM's is an activity expressly permitted by the Act, as follows:

Sec. 5. General corporate powers. A bank organized under this Act...shall...have all the powers conferred by this Act and the following additional general corporate powers:

(16) To establish and maintain...unmanned automatic teller machines....

Ill. Rev. Stat. ch. 17, par. 311(16) (1991). Either a proprietary or shared EFT network is essential to establishing and maintaining ATM's, and therefore, Section 5(12) would allow a state bank to operate such EFT networks. Because a state bank may participate in such an activity directly, a state bank may own stock in a corporation that engages in such activities.

Likewise, the establishment and maintenance of POS terminals is an activity expressly permitted by the Act, as follows:

Sec. 5(17). To establish and maintain point of sale terminals....

Ill. Rev. Stat. ch. 17, par. 311(17) (1991). The servicing of POS terminals is integral to the establishment and maintenance of POS terminals. Again, because a state bank may participate directly in this activity, a state bank may own stock in a corporation that engages in such activities.

Section 5(12) prohibits state banks from establishing a subsidiary or owning stock in a corporation that receives deposits or pays checks. However, ownership of [New EFT Network] stock by a state bank would not constitute the receipt of deposits or the payment of checks, because [New EFT Network] will not own or operate ATM's, but rather will provide information processing services which are integral to state banks providing ATM and POS services.

Although the Act generally does not permit a state bank to purchase stock in private corporations, those prohibitions are intended to prevent state banks from engaging in speculative activity through stock investment. The fact that the Electronic Fund Transfer Transmission Facility Act permits "one or more financial institutions," including state banks, to have an ownership interest in an EFT network such as [EFT Network]

evidences that the Illinois legislature does not view ownership of stock in an EFT network as such a speculative investment. See Ill. Rev. Stat. ch. 17, par. 1333(c) (1991).

In addition, we do not view the proposed purchase of [New EFT Network] stock by state banks to be an unsafe or unsound practice. Initially, stock ownership will be allocated among the Members based on capital and overhead contributions already made. The proposed purchase of [New EFT Network] stock is not based on speculative investment intentions, but rather is a means to participate in the [New EFT Network]. [New EFT Network] stock may only be owned by Participants and, even among Participants, there will be transfer restrictions intended to limit changes in ownership percentages.

However, while the ownership of [New EFT Network] stock is legally permissible for Illinois state banks and their subsidiaries, it is also the Commissioner's obligation to ensure that this activity is conducted in a safe and sound manner, with investor banks adhering to sound prudential banking principles and supervisory practices, including appropriate risk management. Therefore, we will expect each stockholder of [New EFT Network] which is an Illinois state bank to limit its aggregate investment in [New EFT Network] stock to an amount equal to the state bank's legal lending limit.

We conclude that Illinois state banks and their subsidiaries are permitted to own [New EFT Network] stock. Accordingly, the Bank may proceed with its proposal, subject to the representations and conditions set forth in the foregoing discussion.