

INTERPRETIVE LETTER 93-1 (FEBRUARY 3, 1993)

National bank with principal office outside of Illinois may establish trust representative office in Illinois to perform limited representative functions.

We are in receipt of your letter dated *, to *, Manager of the Corporate Fiduciary Division, in which you requested a letter from the Office of the Commissioner of Banks and Trust Companies ("Commissioner") commenting on the proposed establishment of a trust representative office ("Representative Office") in Illinois by * Trust Company, a national banking association whose principal place of business is located in the State of New York.

You have informed us that * Trust Company is engaged primarily in trust activities. It has proposed establishing a Representative Office in Illinois which would engage in the following activities: 1) leasing office space for the use of its own personnel, 2) soliciting potential customers to conduct trust business with * Trust Company and 3) offering for sale, but not actually selling, trust products permitted to be offered by national banks. In addition, you have represented that the Representative Office will not expand the list of activities described above, establish or consummate any trust accounts, accept funds for deposit or investment, give investment advice, manage trust accounts or maintain trust account files. All applications for trust accounts will be analyzed and approved by officers at * Trust Company's offices outside of Illinois.

The Commissioner has no objection to the establishment and operation of the Representative Office in Illinois, provided that the activities of the Representative Office will be limited to those set forth above and * Trust Company obtains a license to establish and maintain the Representative Office pursuant to Section 3 of the Illinois Foreign Bank Representative Office Act. 205 ILCS 650/3 (1992).

Section 4-4 of the Illinois Corporate Fiduciary Act ("Fiduciary Act"), 205 ILCS 620/4-4 (1992), prohibits a foreign corporation from establishing an office, agency or place of business for the "conduct of business as a fiduciary." The term "foreign corporation" includes any national banking association whose principal place of business is located outside of Illinois. 205 ILCS 620/1-5.08 (1992). However, Section 4-2 of the Fiduciary Act permits a foreign corporation, including a national bank whose principal place of business is outside of Illinois, to act as a "trustee, executor, administrator, administrator to collect, guardian, or in any other like fiduciary capacity" if such foreign corporation can act in a fiduciary capacity in its home jurisdiction and the laws of its home jurisdiction would permit an Illinois corporation to act in a similar capacity in that jurisdiction. 205 ILCS 620/4-2 (1992). Under Section 4-5 of the Fiduciary Act, such a foreign corporation must obtain a certificate of authority from the Commissioner prior to acting in a fiduciary capacity. 205 ILCS 620/4-5 (1992). Therefore, a foreign corporation is not prohibited from acting as a fiduciary in Illinois, subject to the certification and

reciprocity requirements set forth above, although it is prohibited from establishing an office for that purpose.

The remaining issue is whether the activities which * Trust Company proposes to perform at the Representative Office constitute the conducting of business as a fiduciary. The phrase "conduct of business as a fiduciary" is not defined in the Fiduciary Act. However, the Office of the Comptroller of the Currency ("OCC") and other states have identified the following activities as the business of fiduciaries: acting as a personal representative of the estate of a decedent, as a guardian, as a trustee under any will, as a trustee of a real estate trust, as a receiver or trustee by court appointment, as an assignee, receiver or trustee under any assignment for the benefit of creditors, or as a fiscal or transfer agent or registrar of the United States, any state, municipality or private corporation. See, e.g., Fla. Stat. ch. 660.41 (1991); N.Y. Banking Law Section 100 (McKinney 1990); Letter from Paul M. Homan, Senior Deputy Comptroller for Banks Supervision, OCC (March 31, 1981). In addition, effecting client transactions, rendering investment advice, having the capacity to receive or receiving deposits, holding securities and performing accounting functions have also been identified as fiduciary activities. Letter from Paul M. Homan, supra.

The OCC, in connection with its determination that national banks have the authority to establish trust representative offices, has also delineated the activities that can be conducted at such offices. Letter from Paul M. Homan, supra; OCC Trust Interpretation No. 150, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) 84,917, at 77,310 (March 18, 1988). According to the OCC, such offices "are not authorized to act as trustees or fiduciaries." Id. Their functions are to serve as a liaison between the home office and the customer who has moved to another part of the country, transfer documents from customers to the home office, provide information to customers about their accounts, answer questions, and solicit new accounts on behalf of the home office. Id. Their authority does not include acting in any fiduciary capacity or performing any discretionary acts, including the daily administration of accounts. Id.

Based on the authorities cited above, the limited activities that * Trust Company proposes to conduct at the Representative Office do not constitute the conduct of business as a fiduciary. Therefore, the Commissioner has no objection to the establishment of the Representative Office for the conduct of the proposed activities; provided, however, that * Trust Company must obtain a license to establish a representative office in accordance with the requirements of the Foreign Bank Representative Office Act. 205 ILCS 650/1-650/6 (1992). The Foreign Bank Representative Office Act, at Section 3, prohibits entities that have not obtained a license from the Commissioner from establishing and maintaining a representative office in Illinois. 205 ILCS 650/3 (1992). Under this act, a representative office is defined in Section 2(c) as an office in Illinois at which a foreign bank conducts representational functions. 205 ILCS 650/2(c) (1992). The term "foreign bank" includes a national bank. 205 ILCS 650/2(b) (1992).

Please note, however, that the interpretations set forth above do not apply to the establishment of trust accounts, the acceptance of funds in Illinois for deposit or

investment, the rendering of investment advice, the management of trust accounts or the maintenance of trust account files.