

INTERPRETIVE LETTER 93-005 (APRIL 23, 1993)

Out-of-state bank holding company may form a de novo Illinois chartered bank to acquire the assets and liabilities of a financial institution in default or in danger of default. [Note: Reference to 10 year de novo prohibition deleted; Bank Holding Company can organize a de novo bank.]

This letter is in response to your inquiry dated *, concerning the provisions of the Illinois Bank Holding Company Act of 1957 ("BHCA"), 205 ILCS 10/1-10/7 (1992) [Ill. Rev. Stat. ch. 17, pars. 2501-2513]. You have informed us that the Ohio Division of Banks is considering the permissibility of an Illinois bank holding company acquiring a branch of a federally chartered thrift located in Ohio which is in the possession of the Resolution Trust Corporation. The transaction would require that the Illinois bank holding company form a de novo Ohio chartered bank to make the acquisition. In order to consider the transaction, first you must determine if the laws of the state of Illinois are reciprocal with the laws of the state of Ohio. Therefore, you have asked whether an Ohio bank holding company would be permitted to make the same acquisition in Illinois.

The Illinois Commissioner of Banks and Trust Companies ("Commissioner") has determined that an Ohio bank holding company would be permitted to form a de novo Illinois chartered bank to acquire the assets and liabilities of the thrift branch in possession of the Resolution Trust Corporation.

Section 3.05(a) of the BHCA provides that a company may not acquire control of an Illinois chartered bank that has not engaged in the business of banking for at least ten years. 205 ILCS 10/3.05 (1992) [Ill. Rev. Stat. ch. 17, par. 2508]. Section 3.05(b)(3) provides an exception to the ten year limitation. An Illinois bank is not deemed to be acquired if it is chartered solely to purchase, assume, or acquire all or some of the assets or liabilities of an eligible depository institution. An eligible depository institution includes an insured savings association or bank that is in default or in danger of default. 205 ILCS 5/2 (1992) [Ill. Rev. Stat. ch. 17, par. 302]. For purposes of Section 3.05, a de novo bank that is formed to acquire all or some of the assets or liabilities of a failed or failing institution is considered an existing institution.

Therefore, an Ohio bank holding company would be permitted to charter a de novo bank in Illinois to acquire the assets and/or liabilities of a branch of a thrift that is in default or in danger of default, provided that the remaining requirements set forth in Section 3.071 of the BHCA relating to application to and approval by the Commissioner are met.