

INTERPRETIVE LETTER 93-008 (JULY 2, 1993)

Out-of-state bank holding company does not have to file a change in control or interstate application when it changes its state of incorporation by merger.

We are in receipt of your letter in which you requested a confirmation of your interpretation of Interpretive Letter ("IL") 89-15, promulgated by the Illinois Commissioner of Banks and Trust Companies ("Commissioner"), as applied to a bank holding company's changing its state of incorporation. We concur with your interpretation of IL 89-15 that Section 18 of the Illinois Banking Act, 205 ILCS 5/18 (1992), [Ill. Rev. Stat. ch. 17, par. 325 (1991)], does not require a bank holding company to file a change in control application with the Commissioner when it changes its state of incorporation through a merger with a subsidiary corporation. The bank holding company resulting from the merger would retain the same identity as the merging parent bank holding company. Furthermore, the Illinois Bank Holding Company Act of 1957, 205 ILCS 10/1 et seq. (1992), [Ill. Rev. Stat. ch. 17, pars. 2501 et seq. (1991)], does not require the bank holding company to file an interstate application with this Agency.

Your client, * ("BHC"), is currently incorporated in the State of * ("2nd State). BHC owns all of the outstanding voting stock of * Bank, *, Illinois, ("* Illinois Bank"), as well as of * Bank, *, 2nd State ("* 2nd State Bank"). BHC would like to change its state of incorporation to the State of * ("3rd State") by merging with a corporation which is a subsidiary of BHC and which is incorporated in 3rd State. The 3rd State subsidiary would be the surviving corporation with BHC being merged out of existence. The surviving corporation would have the same name in 3rd State that BHC had in 2nd State as well as the same board of directors, management, and stockholders. The surviving corporation would also have the same property, rights, powers, obligations, and liabilities that BHC had, including total control of * Illinois Bank and * 2nd State Bank.

The only change that would occur in your client's change of its state of incorporation is your client's place of business. No other part of BHC's essential character would change. The same stockholders, directors, and officers that controlled, directed, and managed BHC, * Illinois Bank, and * 2nd State Bank before the merger would still control, direct, and manage those entities after the merger. There would be no change in the control of * Illinois Bank where the only essential change in BHC would be in its place of business.

It is the Commissioner's interpretation that Section 18 of the Illinois Banking Act does not require BHC to file an application for a change in the control of * Illinois Bank in the event BHC changes its state of incorporation in the manner described previously in this letter. Additionally, the Illinois Bank Holding Company Act does not require BHC to file an interstate application.