INTERPRETIVE LETTER 93-015 (AUGUST 24, 1993)

A savings and loan association or savings bank that is at least 80% owned by a bank holding company is a "bank" for purposes of acting as an "affiliate facility."

We are writing in response to your inquiry as to whether the "affiliate facility" provisions of the Illinois Banking Act permit a savings and loan association or a savings bank to establish banking offices at an affiliated state bank. As discussed below, we have concluded that commonly-owned banks and thrifts may engage in affiliate banking under Illinois law.

The terms relating to affiliate facilities are defined in Section 2 of the Illinois Banking Act, 205 ILCS 5/2 (1992), which provides in relevant part:

> "Affiliate facility" of a bank means a main banking premises or branch in this State of another commonly owned bank that has its main banking premises in this State. The main banking premises or any branch of a bank may be an "affiliate facility" with respect to one or more commonly owned banks. (emphasis added)
>
> "Bank" means any person doing a banking business whether subject to the laws of this or any other jurisdiction.

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> "Commonly owned banks" means two or more banks that are ultimately owned by a single bank holding company such that the bank holding company owns...not less than 80% of...voting stock...; "commonly owned bank" refers to one of a group of commonly owned banks but only with respect to one or more other banks in the same group. (emphasis added)

The specific authority to establish affiliate facilities is set forth in Section 5(23) of the Illinois Banking Act, 205 ILCS 5/23 (1992), which permits a state bank to conduct transactions for its affiliated "commonly owned banks" and to permit the state bank to authorize those "commonly owned banks" to conduct transactions for it. Section 5(23) states, in relevant part, that a state bank is authorized:

(23) With respect to affiliate facilities:

> (a) to conduct at affiliate facilities...transactions...on behalf of another commonly owned bank....
>
> (b) to authorize a commonly owned bank to conduct...on behalf of it...transactions...at affiliate facilities.

> Any bank intending to conduct or to authorize a commonly owned bank to conduct at an affiliate facility any of the transactions...shall give written notice to the Commissioner.... (emphasis added)

The issue you have raised is whether a thrift is a "bank" for purposes of the provisions of Section 5/23.

In Heritage Bank and Trust Company v. William C. Harris, 132 Ill. App. 3d (1st Dist. 1985), the court construed provisions of Section 68(4)(h) of the Illinois Banking Act, which required that a bank applicant attach a copy of its contract with "another bank" when the applicant bank proposed to assume the state bank's liabilities in a voluntary dissolution. The question presented in Heritage was whether Joliet Federal Savings and Loan Association ("Joliet Federal"), a federal mutual savings and loan, was a "bank." Applying the definition of "bank" found in Section 2 of the Illinois Banking Act, the court concluded that: 1) Joliet Federal was a "person" (i.e., a corporation); 2) Joliet Federal was engaged in the "banking business;" 3) Joliet Federal was "subject to the laws of another jurisdiction" (the United States); and therefore, 4) Joliet Federal was a "bank" under the Illinois Banking Act.

After Heritage, the Illinois legislature amended Section 68(4)(h) of the Illinois Banking Act to require that the contract to assume liabilities of a voluntarily dissolving bank be with "another state or national bank," thereby limiting its application to state or national commercial banks. P.A. 84-258. However, the legislature did not amend the Section 2 definition of "bank" to exclude thrifts from its provisions. The legislature's decision not to amend Section 2 appears to have been a deliberate one. After the Financial Institutions Reform and Recovery Enforcement Act ("FIRREA") was enacted in 1989, Section 2 again was amended to include the term "insured savings association," P.A. 86-952, in order to track certain FIRREA provisions concerning state and federal thrifts. Once again, the legislature opted not to respond to Heritage, as it did not amend the definition of "bank" to limit its application only to commercial banks. Had the legislature intended to limit affiliate banking to state or national banks, we believe it would have responded to the Heritage case with such a limitation when it enacted P.A. 86-952, which also authorized affiliate banking transactions.

Based on the plain language of the definition of "bank" set forth in Section 2 of the Illinois Banking Act, as noted in the Heritage case, and because the legislature has not chosen to amend the definition of "bank" in the aftermath of Heritage, we conclude that a commonly owned thrift and a commonly owned commercial bank are both "banks" under Section 2, and therefore they are "banks" for the purposes of conducting affiliated transactions under Section 5(23) of the Illinois Banking Act.