

INTERPRETIVE LETTER 93-017 (OCTOBER 14, 1993)

Proposed bank holding company may not be an incorporator of an interim state bank.

This is in reply to your inquiry regarding whether a corporation that is a proposed, but not yet approved, bank holding company ("BHC") could be named as an incorporator on an application for a Permit to Organize an interim state bank ("Application"). Specifically, you were referring to a proposed "triangular merger" or "interim bank merger" in which an interim bank would be organized and merged with * State Bank ("Bank"). This transaction would result in Bank being wholly-owned by the BHC.

The statutory requirements applicable to the organization of an Illinois state bank, including an interim bank, are found in Sections 7 through 12 of the Illinois Banking Act ("Act"), 205 ILCS 5/7-5/12 (1992) [Ill. Rev. Stat. ch. 17, pars. 314-319]. Section 8 of the Act states that the Application must be submitted by a minimum of five incorporators "who shall be individuals and residents of this State except that a bank holding company may be the sole incorporator of a state bank that is authorized to be acquired pursuant to subsection (b) of Section 3.05 of the Illinois Bank Holding Company Act of 1957 and that is chartered solely to purchase, assume, or both purchase and assume some or all of the assets or liabilities of, or chartered to act as paying agent for the payment of deposit insurance to depositors of an eligible depository institution." Thus, an incorporator must be an individual unless a BHC is the incorporator of a bank specifically described in Section 8.

It is our opinion that the word "individual," as used in Section 8, should be given its common meaning as "a private or natural person as distinguished from a partnership, corporation, or association." Black's Law Dictionary 773 (6th ed. 1990). This conclusion is further supported by the fact that Section 2 of the Act, 205 ILCS 5/2 (1992) [Ill. Rev. Stat. ch. 17, par. 302], defines "person" as "an individual, corporation, partnership, joint venture, trust, estate, or unincorporated association." This definition suggests that while an individual and a corporation are both "persons," the term "individual" must mean something other than "corporation." The proposed BHC, whether or not approved, is not an individual for purposes of Section 8.

As we understand the facts, the corporation is not yet a BHC because it has not received the necessary approval from the Federal Reserve Bank of Chicago. Because the proposed BHC is neither an individual nor a BHC, it can not be an incorporator of an Illinois state bank.

Even if the proposed BHC does obtain the necessary approval and becomes a BHC, it could not be an incorporator of the interim bank in question, because the interim bank is not the type of bank described in Section 8 that may have a BHC as its sole incorporator.

