

**INTERPRETIVE LETTER 93-026 (DECEMBER 15, 1993)**

**Portion of loan collateralized by deposit account of guarantor is exempt from lending limits; limit applicable to aggregate guarantees depends on the form of the guarantees.**

We are writing in response to your request dated \*, for the Illinois Commissioner of Banks and Trust Companies ("Commissioner") to answer certain questions regarding the \* Bank's ("Bank") legal lending limit. You have asked whether that portion of a loan collateralized by a segregated deposit account would be subject to Bank's legal lending limit, and also whether a particular guarantor may guarantee the entire amount of a loan, if that amount coupled with other loans to the guarantor together exceeded Bank's legal lending limit. As discussed below, a loan secured by funds in a segregated deposit account in Bank is exempt from legal lending limits and a guarantor's guarantee which is similarly secured is also exempt from the guarantee limit to the extent of such collateral.

You stated that your borrower, \* ("Borrower"), desires to borrow \$\* to purchase \* lots in \*. Borrower will pay \$\* for these lots. The appraised value of the lots is \$\*. Bank will loan up to 75% of the appraised value, which is \$\*. The \$\* balance of the loan will be 100% collateralized with a certificate of deposit or money market account ("Deposit Account") in Bank. The Deposit Account belongs to \* ("Guarantor"), not to Borrower. Guarantor will pledge this Deposit Account to secure payment of the loan and also guarantee the full amount of the loan to Borrower.

Your first question is whether the portion of the loan collateralized by Deposit Account is subject to Bank's legal lending limit of \$\*. Section 35 of the Illinois Banking Act ("Act"), 205 ILCS 5/35 (1992) [Ill. Rev. Stat. ch. 17, par. 343], lists exemptions from loan and investment limits. Specifically, Section 35(7) states:

The limitations in Sections 32, 33 and 34 upon the liabilities of any one person...shall not apply to the following as to which there shall be no limitation:

(7) Loans or extensions of credit secured by a segregated deposit account in the lending bank.

A certificate of deposit in your Bank qualifies as a "segregated deposit account in the lending bank" provided the certificate of deposit is pledged as collateral for the loan, Bank's security interest is perfected, and provided the terms of the collateral agreement will not allow the certificate of deposit to be used for other purposes while it is used to exempt the loan from Bank's lending limit. See Commissioner's Interpretive Letter 91-11 dated May 23, 1991. A money market account may also qualify as a segregated deposit account if appropriate steps are taken to perfect Bank's security interest in the account and Bank maintains restrictions on the use of the account while it is pledged as collateral. Section 35(7) does not require that the segregated deposit account belong to the borrower.

If Guarantor pledges his Deposit Account to secure Borrower's loan, that portion of the loan to Borrower which is so collateralized is exempt from lending limits pursuant to Section 35(7).

You also informed us that Guarantor will guarantee the entire \$\* loan to Borrower. Guarantor is currently guaranteeing another \$\* loan at Bank. Your second question is whether the total amount guaranteed exceeds the limit for guarantees. The limit applicable to the aggregate guarantees of Guarantor depends on the form of those guarantees. If the guarantees are "guarantees of payment," a limit of 20% of Bank's unimpaired capital plus 20% of Bank's unimpaired surplus applies, which is \$\*. However, if the guarantees are "guarantees of collection," a limit of 25% of Bank's deposits, but no more than 50% of its unimpaired capital and unimpaired surplus, will apply. See Interpretive Letter 93-013, dated July 30, 1993. If the Deposit Account is pledged to collateralize the guaranty, to the extent that portion of the guaranty is so secured, it is exempt from the guarantee limits of Section 32. Since the \$\* loan is the underlying obligation which is guaranteed, this collateralization of the guaranty would not be an improper use of the Deposit Account for other purposes.