

INTERPRETIVE LETTER 93-028 (DECEMBER 16, 1993)

Loans secured by bank holding company stock are "covered transactions" that are aggregated for lending limit purposes.

This is in reply to your letter dated *, regarding the application of Section 35.2 of the Illinois Banking Act ("Act"), 205 ILCS 5/35.2 (1992) [formerly, Ill. Rev. Stat. ch. 17, par. 345], to loans secured by the stock of an affiliate. Specifically, you were inquiring about the legal lending limit of * ("Bank") for loans secured by the stock of * ("BHC"). BHC is the bank holding company that owns 100% of the outstanding shares of the Bank.

In your letter, you stated that the Bank has capital of \$*, surplus of \$* and undivided profits of \$*. Pursuant to Section 35.2(a)(1), the Bank could engage in covered transactions with respect to any one affiliate in an amount not exceeding \$* and covered transactions with respect to all of the Bank's affiliates in an amount not exceeding \$*. You have inquired about the ability of the Bank to loan money secured by BHC stock if the Bank has already extended a loan to Borrower A in the amount of \$* secured by BHC stock and a second loan to Borrower B in the amount of \$* secured by BHC stock. For the reasons discussed below, it is the position of this Agency that the Bank could extend additional loans not exceeding a total of \$* secured by BHC stock without violating the limits of Section 35.2(a)(1).

Section 35.2(b)(7)(D) of the Act defines a "covered transaction" to include "the acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person or company." Section 35.2(b)(1)(A) defines "affiliate" to include "any company that controls the state bank." Given these definitions, covered transactions would include the acceptance of stock issued by the Bank's parent bank holding company as security for a loan to any borrower. The amount of such covered transactions, with respect to the parent bank holding company, would be restricted by Section 35.2(a)(1)(A).

Having made loans of \$* and \$* secured by BHC stock, the Bank would be authorized to engage in additional covered transactions involving BHC to an amount not exceeding \$*. These additional covered transactions could include loans with BHC stock as collateral. However, the Bank must be aware that the aggregate of its covered transactions involving all affiliates, including covered transactions involving BHC, may not exceed 20% of the Bank's capital, surplus and undivided profits without violating Section 35.2(a)(1)(B).