

**INTERPRETIVE LETTER 93-030 (DECEMBER 21, 1993)**

**Bank may retain corporate stock received as dividends from investment in "small business investment company."**

This Agency has considered the issue of whether \* ("Bank") is authorized to retain shares of \* ("Corporation") stock currently held by Bank. For the reasons described below, it is our opinion that Bank is authorized to retain the stock in question.

Corporation is engaged in developing human blood substitute products, as well as specialty oxygen therapeutics and drug delivery products. Illinois state-chartered banks do not currently have the authority to purchase the stock of enterprises such as Corporation. However, those banks do have the authority to make investments in a small business investment company ("SBIC"). See Interpretive Letter No. 86-2. Under this authority, Bank invested in a Chicago-based SBIC named \* ("\* Capital"). \* Capital invested in Corporation, and Corporation has paid stock dividends from time to time to its investors. \* Capital, in turn, has passed on some of those Corporation stock dividends to its investors, including Bank. At no time has Bank purchased any shares of Corporation stock.

Under the circumstances described above, Bank is authorized to retain ownership of the \* shares of Corporation stock currently on Bank's books. Bank also may receive and retain future shares of Corporation stock, if such shares are received as dividends from \* Capital and are not purchased by Bank. The authority to invest in a SBIC includes the authority to reap the benefits of such investment. To conclude otherwise would suggest that Bank must forfeit the opportunity to receive and retain a valuable asset offered to Bank at no cost as a result of its investment in the SBIC.

National banks are expressly authorized to receive the benefits of SBIC stock ownership, including stock dividends. 12 C.F.R. 7.7535 - Receipt of stock from SBIC. Illinois state banks are generally authorized by Section 5(11) of the Illinois Banking Act, 205 ILCS 5/5(11) (1992), to do any act that a national bank is authorized to do. Specifically, Section 5(11) states:

A bank organized under this Act...shall...have all the powers conferred by this Act and the following additional general corporate powers:

(11) Notwithstanding any other provisions of this Act, to do any act and to own, possess, and carry as assets property of the character, including stock, which is at the time authorized or permitted to national banks by an Act of Congress, but subject always to the same limitations and restrictions as are applicable to national banks by the pertinent federal law.

Pursuant to Section 5(11) and 12 C.F.R. 7.7535, we conclude that an Illinois state bank may own, possess and carry as assets stock dividends that result from the bank's investment in a SBIC.