

INTERPRETIVE LETTER 94-006 (MAY 2, 1994)

Loan to limited partnership is not aggregated with other loans to general partner of limited partnership if lending bank's recourse is limited to the assets of the limited partnership by the loan documents.

We are writing in response to your letter dated * in which you ask whether a loan to a limited partnership must be aggregated with other liabilities of the limited partnership's general partner if the terms of the loan specifically exempt the general partner from liability for the loan. Specifically, * ("Bank") holds a note signed by * Partnership ("General Partner"), a general partner of * Limited Partnership ("Limited Partnership"), on behalf of Limited Partnership, which if aggregated with other borrowings from Bank by General Partner would exceed Bank's lending limit under Section 32 of the Illinois Banking Act, 205 ILCS 5/32. For the reasons set forth below, we conclude that since the loan signed by General Partner specifically limits Bank's recourse to the assets of Limited Partnership, the loan to Limited Partnership should not be aggregated with any other obligations of General Partner to Bank.

Along with your letter, you provided a copy of the note executed in connection with the loan in question to Limited Partnership. This note included the following language:

Notwithstanding anything to the contrary contained elsewhere herein, the parties hereto acknowledge and agree that * Limited Partnership (the "Partnership") is a limited partnership, and, with respect to any of the debts, liabilities, obligations or duties of the Partnership, recourse shall only be against the Partnership and the Partnership assets, but there shall be no recourse against any of the individual partners of the Partnership (either limited or general) or against any of the personal assets of any such partners. No partner of the Partnership shall have any individual or personal liability with respect to any debts, obligations, liabilities or duties of the Partnership hereunder (emphasis added).

Section 32 of the Illinois Banking Act, 205 ILCS 5/32, provides in relevant part:

Sec. 32. Basic loaning limits. The liabilities to any state bank of any person for money borrowed, including in the liabilities of a partnership or joint venture the liabilities of the several members thereof, shall at no time exceed 20% of the amount of the unimpaired capital of such bank, and 20% of its unimpaired surplus.

Section 32 specifically requires that a calculation of a person's liabilities include liabilities attributable to that person's involvement in a partnership. Section 2 of the Illinois Banking Act, 205 ILCS 5/2, defines the term "person" to include a partnership. Consequently, as a general rule, a general partnership's liabilities attributable to its inclusion in a limited partnership will be aggregated with the other liabilities of the general partnership. Likewise, the liabilities of the general partners of the general partnership will be aggregated with the liabilities of the general partnership. See Commissioner's Interpretive Letter No. 87-3.

We have reviewed the Uniform Partnership Act ("UPA"), 805 ILCS 205/1 et seq., as well as Illinois caselaw construing the UPA provisions, and have found no statutory provisions or reported cases analogous to the situation described in your letter. The provisions of the UPA and the cases construing its provisions typically involve loan documents that are silent concerning a general partner's liability to a third party such as Bank, where the third party asserts liability against the general partner and the UPA aggregates the partnership's liability with other liabilities of the general partner. See generally UPA Sections 9 and 10, 805 ILCS 205/9, 205/10, and the cases reported thereunder. None address an express provision in a promissory note that specifically exempts a general partner from the partnership's liability.

The Uniform Limited Partnership Act ("ULA"), 805 ILCS 210/100 et seq., also contains no provisions on point. The ULA simply states that the rights, powers, duties and liabilities of a general partner in a limited partnership, both with respect to limited and general partners and to third parties, is the same as that of "a partner in a partnership without limited partners" with respect to other general partners and to third parties. 805 ILCS 210/403.

In discussing loan aggregation rules under Section 32, the Commissioner's Interpretive Letter No. 87-3 reflects the general rules of liability ascribed to partners under the UPA, ULA and traditional common law. However, Interpretive Letter No. 87-3 should not be read to mandate that general partners in either a limited or general partnership have unlimited personal liability even if the underlying loan document that would create such liability expressly exempts the partners from liability. If the bank's loan documents in a loan to a partnership expressly waive the bank's right to seek recourse against a specific partner, then no underlying cause of action for recourse exists against that partner. Under such circumstances, Section 32 cannot be viewed to impose liability on that partner for purposes of aggregating the partnership's loans with the partner's own liabilities.

As a threshold issue, the "liability" to a bank addressed in Section 32 must be interpreted to refer to a cause of action for recourse that a bank has against a borrower. Nothing in the UPA, ULA or traditional common law would suggest a contrary result to this logical conclusion. Therefore, we conclude that because General Partner has no personal legal liability for the borrowings of Limited Partnership, its obligation under that note should not be aggregated with its direct borrowings from the Bank for purposes of Section 32.

