

INTERPRETIVE LETTER 94-016 (SEPTEMBER 1, 1994)

An Indiana trust company may perform representative services at a representative office in Illinois, but may not establish a place of business in Illinois to conduct business as a fiduciary.

Your letter of *, to * has been referred to me for a response. You have indicated that * Trust Company, an Illinois corporation ("Trust Company"), has proposed to expand its operations at its Indianapolis representative office. The Indiana Code at 28-1-12-1 permits an out-of-state trust company to establish a place of business or agency in Indiana for the conduct of business as a fiduciary if the laws of the state in which the trust company is organized would permit an Indiana trust company to establish a place of business in that state for the conduct of business as a fiduciary. You have asked the Illinois Commissioner of Banks and Trust Companies ("Commissioner") for a written opinion as to whether the activities of Trust Company would be allowed under Illinois law if Trust Company were an Indiana company. Based on the functions that Trust Company proposes to perform, an Indiana trust company could establish a trust representative office in Illinois and perform the proposed activities at such office. These activities do not constitute the conduct of business as a fiduciary under Illinois law.

Section 4-4 of the Illinois Corporate Fiduciary Act ("CFA"), 205 ILCS 620/4-4 (1992), prohibits a foreign corporation from establishing an office, agency or place of business for the "conduct of business as a fiduciary." The term "foreign corporation" includes any corporation organized under the laws of any state other than Illinois, 205 ILCS 620/1-5.08(a)(1992). However, Section 4-2 of the CFA permits a foreign corporation to act as a "trustee, executor, administrator, administrator to collect, guardian, or in any other like fiduciary capacity" if such foreign corporation and the laws of its home jurisdiction would permit an Illinois corporation to act in a similar capacity in that jurisdiction. 205 ILCS 620/4-2 (1992). Under Section 4-5 of the CFA, a foreign corporation must obtain a certificate of authority from the Commissioner prior to acting in a fiduciary capacity. Therefore, a foreign corporation is not prohibited from conducting fiduciary activities in Illinois, but it is prohibited from establishing a place of business for that purpose.

In Interpretive Letter No. 93-1 (February 3, 1993) ("IL 93-1"), the Commissioner determined that the term "conduct of business as a fiduciary" includes acting as a personal representative of the estate of a decedent, as a guardian, as a receiver or trustee by court appointment, as an assignee, receiver or trustee under any assignment for the benefit of creditors, or as a fiscal or transfer agent or registrar. Conduct of business as a fiduciary also includes effecting client transactions, rendering investment advice, having the capacity to receive or receiving deposits, holding securities and performing accounting functions.

In addition, a foreign corporation is permitted to establish a representative office in Illinois. According to IL 93-1, a representative office serves as a liaison between the

home office and customers who have moved out of state, transfers documents from customers to the home office, provides information to customers about their accounts, answers questions and solicits new accounts. Although an out-of-state bank that elects to establish a representative office in Illinois must obtain a license from this office in accordance with the requirements of the Foreign Bank Representative Office Act, trust companies are not subject to this requirement.

Trust Company has indicated that its representatives in Indiana will market trust services, assist local attorneys to draft trust documents appointing Trust Company as trustee, answer questions from Trust Company's affiliate Financial Consultants about trusts and trust services, meet with clients to discuss questions about their accounts, transmit documents to the home office and generally serve as a liaison. Trust Company has indicated that it will not be performing discretionary acts or administering accounts in Indiana. Any documents that are executed in Indiana will be transmitted to the home office for review and acceptance. The Commissioner has determined that these functions are representative in nature and do not constitute the "conduct of business as a fiduciary." Therefore, these functions, if an Indiana trust company were performing them in Illinois, could be performed at a representative office in Illinois.

The Commissioner notes, however, that the representatives in Indiana will be titled as "Regional Trust Officer" and "Trust Officer." These titles could give the impression that the representatives have the authority to conduct business as a fiduciary on behalf of Trust Company in Indiana. We would object to an Indiana trust company's representatives at a representative office in Illinois using such designations because of the implication of apparent authority.