

INTERPRETIVE LETTER NO. 95-6 (AUGUST 1, 1995)

State bank may repurchase portions of a loan participation sold that the bank had provided the amount of the loan held on its books complies with the current statutory limit.

This letter responds to your inquiry addressed to the Commissioner of Banks and Trust Companies ("Commissioner") dated *. Your letter asks whether a state bank may repurchase a loan participation which was sold at the loan's origination to avoid violating legal lending limitations. Based on the facts set forth in this letter, the Commissioner is of the opinion that a bank may, in compliance with currently applicable legal lending limitations, repurchase a loan participation sold.

The subsidiary banks of * ("Banks") originated certain loans which exceeded Banks' legal lending limitations when made. Banks sold portions of these loans to non-affiliated banks to avoid violating each bank's legal lending limit. Effective June 29, 1994, amendments to Sections 2 and 32 of the Illinois Banking Act ("Act"), 205 ILCS 5/2 and 5/32 (1994), changed the method of calculating the legal lending limit for state banks. These changes in the calculation of the legal lending limit increased the legal lending limit for Banks. Banks now desire to repurchase portions of the loan participations sold, increasing the loan balances to the amounts now permitted by the increase in Banks' legal lending limits.

Loan balances sold to comply with legal lending limits may be repurchased when doing so will not violate legal lending limits at the time of the repurchase. On October 13, 1994, the Commissioner sent a letter to all state bank presidents which included examination guidelines for Eliminating Violations of Law Pertaining to Lending, Investment and Lease Limits (a copy of which is enclosed for your review). The guidelines state that a violation of Section 32 of the Act will cease to exist if the portion of the loan in violation "no longer exceeds 20% of the unimpaired capital and unimpaired surplus as defined by the Act at the time the liabilities were incurred" ("Statutory Limit"). A state bank may, as Banks did, eliminate or prevent a violation of the Statutory Limit by selling the portion of the loan in excess of the Statutory Limit to a third party without recourse. Nothing in the definitions or provisions of the Act, the Commissioner's letter or examination guideline prohibits the repurchase of that same loan balance initially sold to comply with the Statutory Limit. This activity is acceptable as long as the balance of the total loan does not violate the bank's current Statutory Limit.