

INTERPRETIVE LETTER 95-7 AUGUST 29, 1995

Risk participations in a loan between branches of the same foreign bank do not constitute an unauthorized guarantee of another bank's loan.

This letter responds to your inquiry sent to the Commissioner of Banks and Trust Companies ("Commissioner") dated *. You ask whether a foreign bank branch in Illinois may assume a risk participation, or guarantee a loan made by another foreign bank branch of the same foreign bank. Based on the specific facts within this letter, the Commissioner is of the opinion that a foreign bank branch in Illinois may enter into a risk participation with, or guarantee an obligation at, a foreign bank branch or agency of the same foreign bank. (Hereinafter branches and agencies are collectively referred to as "branches.")

A branch bank of * , outside of Illinois, desires to fund a loan to a subsidiary of a company with which * - Chicago Branch maintains a relationship. The branch of * making the loan, therefore, requests * - Chicago Branch to assume a risk participation, or guarantee the loan.

In general, state banks in Illinois may not assume or purchase risk participations in, or guarantee, other bank's loans or investments. Foreign branch banks conducting business in Illinois possess "the same, but no greater, rights and privileges as a State bank." 205 ILCS 645/3 (1994). Section 5 of the Illinois Banking Act ("Act") does not grant powers to a state-chartered bank to engage in risk participations or guarantee loans of another foreign bank.

No prohibited guarantee occurs when a bank branch assumes a risk participation, or guarantees a loan or obligation at another bank branch of the same foreign bank. Bank branches, including foreign bank branches, are not corporate entities separate from the foreign bank. A bank together with all of its branches comprise one corporate entity. The books and ledgers of the branches and the bank are fully consolidated. A guarantee by one bank branch of another bank branch loan does not increase the credit risk to the foreign bank. If a loan results in a loss to the funding branch, the bottom line of the foreign bank is adversely affected regardless of the branch which incurs the loss. Assuming a risk participation in another branch's loan is not a guarantee because there is no separate loss of capital from that branch. The placement of a risk participation by one bank branch in favor of another bank branch of the same foreign bank serves only as an accounting device, as management endeavors to accurately allocate profits and losses to activities and credit relationships at each of the respective bank branches. Foreign bank branches may indemnify the losses on particular loans made by another bank branch of the same foreign bank, whether through risk participation or guarantee.

In order to account for the gains or losses incurred due to risk participations or guarantees at * - Chicago Branch, the Commissioner will review all documents related to these transactions during annual examinations. If the assets supported by the risk participation are Listed or Classified, this condition will be reflected in the Asset Quality Analysis of

the Commissioner's Report of Examination. This interpretation does not affect the general policy that banks may not assume risk participations or guarantee loans made by other banks.