

INTERPRETIVE LETTER NO. 95-10 (OCTOBER 2, 1995)

A loan to a limited liability company is not aggregated with individual borrowings of a company member unless the bank is actually looking to the member for repayment.

This is in response to your inquiry regarding a proposed loan from * ("Bank") to a limited liability company ("Company"). You stated that Company will be in the swine farrowing business. Company will have at least four members, and the members may engage in transactions with Company; specifically, members may purchase pigs from Company. Some members have personal or corporate borrowings from Bank and may guarantee the loan to Company. You have inquired as to whether the proposed loan to Company and the guarantees from the members would be aggregated with other loans to Company's members for lending limit purposes.

Section 10-10 of the Limited Liability Company Act, 805 ILCS 180/10-10 (1994), provides that Company's members shall be personally liable for Company's debts "to the extent that a shareholder of an Illinois business corporation is liable in analogous circumstances under Illinois law." Because a shareholder of a corporation is not personally liable for a loan to the corporation, the members will not, under ordinary circumstances, be liable for a loan to Company and no aggregation with members' personal borrowings would occur for lending limit purposes.

The circumstances under which a loan to Company would be aggregated with a member's personal borrowings are set forth in this Agency's rule addressing aggregation of loans. Title 38 Illinois Administrative Code Chapter II, Part 330 (Subpart B) (copy enclosed). Generally speaking, a loan to any party (including Company) may be aggregated with loans to a second party if the second party is actually looked upon as the primary source of repayment (i.e., the borrower that is the actual maker of the note does not have the creditworthiness to justify the loan, and in reality the bank is looking to the second party for repayment). If Bank concludes in good faith that Company has or will have sufficient income, collateral, etc. to service its debt, then the loan to Company would not be aggregated with the members' personal borrowings. A member may guarantee the loan to Company to provide additional security to Bank, and such member's personal borrowings and guarantees remain subject to the limits set forth in Section 32 of the Illinois Banking Act, 205 ILCS 5/32 (1994). The loan to Company is not aggregated with the member's/guarantor's personal borrowings unless Company is not creditworthy and Bank looks upon the member/guarantor as the primary source of repayment.