

INTERPRETIVE LETTER NO. 98-11 (SEPTEMBER 8, 1998)

State banks may offer data processing and data transmission services on a for-profit basis either directly, through a subsidiary or through a bank service corporation.

The Office of Banks and Real Estate ("Agency") has been asked to determine whether Illinois state-chartered banks ("state banks") are authorized to sell data processing and data transmission services to the public. For the reasons and subject to the conditions discussed below, the Agency has concluded that state banks may offer such services to the same extent as savings associations.

Public Act 90-665 amended the Illinois Banking Act ("Act") to give state banks the power to offer any product or service that is authorized for insured savings associations. This authority is subject to the same limitations and restrictions that apply to insured savings associations. 205 ILCS 5/5(25). Data processing and data transmission services are among the products and services that state banks may offer following the enactment of Public Act 90-665.

Section 1008(a)(18) of Illinois' Savings Bank Act authorizes state-chartered savings banks "to provide data processing services to others on a for-profit basis." 205 ILCS 205/1008(a)(18). Similarly, federally-chartered savings associations are authorized to offer data processing and data transmission services. The federal Office of Thrift Supervision ("OTS") has issued a regulation stating the authority and conditions by which federal savings associations may offer those services. 12 C.F.R. 545.138. A copy of the OTS regulation is enclosed for your reference.

Federal savings associations may offer data processing services directly or by participating with others in a for-profit data processing corporation that complies with the standards set forth in 12 C.F.R. 545.138. *See* letter from OTS Deputy General Counsel V. Gerard Comizio, December 13, 1993, at Fed. Banking L. Rep. (CCH) 1993-1994 Transfer Binder, par. 82, 752.

Federal savings associations are also permitted to provide data processing services through a "service corporation" pursuant to another OTS regulation. 12 C.F.R. 559.4(b). If a state bank chooses to invest in a service corporation to carry out this activity, it must comply with all of the restrictions that apply to federal savings associations pursuant to 12 C.F.R. 559. Also, a state bank's investment in a bank service corporation would be subject to the provisions of the federal Bank Service Corporation Act ("BSCA"). 12 U.S.C. 1861 *et seq.* The BSCA provides that all of the stock of a bank service company must be owned by one or more insured banks that are all located in Illinois (except for multi-state activities that must receive prior approval from the Federal Reserve Board); that a state bank may not invest more than 10% of its unimpaired capital and unimpaired surplus in any bank service company (and not more than 5% of its total assets in bank service companies); that the products or services offered by the bank service company can be offered only in Illinois (except for multi-state activities that must receive prior approval from the Federal Reserve Board); and that a bank service company is subject to examination and regulation by the appropriate federal regulator of the principal investor in the bank service company.

Under Section 5(25) of the Act, state banks are now authorized to offer data processing and data transmission services to other financial institutions, to their customers and to the general public to the same extent as state-chartered savings banks and federally-chartered savings associations. In compliance with the applicable statute and regulation, state banks may offer this service

directly, through a subsidiary established pursuant to Section 5(12) of the Act, or by participating with other investors or financial institutions in a data processing corporation or service corporation.

The Federal Deposit Insurance Corporation ("FDIC") has issued a regulation that generally requires FDIC approval before a state bank may engage in an activity not permitted for national banks. 12 C.F.R. 362. A state bank should contact the FDIC to determine whether the bank must file an application with and receive approval from the FDIC prior to engaging in the data processing or data transmission activities addressed herein.

We hope that you find this information to be helpful. If you have questions regarding this matter or if we can be of further assistance, please feel free to contact us.