

## **Interpretive Letter 99-02 (September 27, 1999)**

### **Bank may invest seed money in a mutual fund for which it will also act as an investment subadviser.**

This is in response to your letter of August 13, 1999 in which you asked the Office of Banks and Real Estate ("Agency") to issue a no objection letter with respect to \* ("Bank") investment in a mutual fund for which Bank will also act as subadviser. For the reasons stated below, the Agency does not object to the proposed investment.

As you described the proposed investment, Bank will contribute seed money for this mutual fund prior to the offering and sale of the fund shares to the public. The Bank intends to withdraw its investment in stages as the fund grows, with its entire investment to be withdrawn within one year following the offering and sale of the shares. In addition, Bank will act as subadviser to the fund and be responsible for the investment of the fund's entire investment portfolio.

Section 33 of the Illinois Banking Act ("Act") authorizes a state chartered bank to invest in "marketable investment securities", including mutual funds, if the investment portfolio consists of investments that a bank could invest in directly. 205 ILCS 5/33. According to your letter, this fund's investment portfolio includes securities of U.S. government agencies and other government sponsored entities, mortgage pass-through securities, investment grade corporate bonds, and money market and other cash equivalents, all of which a bank may invest in directly. This is a permissible investment for Bank.

A state-chartered bank may also act as an investment adviser to its customers. The authority to act as an investment adviser is derived from Section 3 of the Act in that it is part of a general banking business. The Illinois Administrative Code provides guidelines for determining what falls within the scope of a general banking business. Section 320.30 lists as factors to be considered the extent to which other banks participate in the activity and whether the Board of Governors of the Federal Reserve System have found the activity appropriate for non-bank subsidiaries of a bank holding company under 12 U.S.C. 1843(c)(8). 38 Illinois Administrative Code 320.30. Regulation Y specifically lists investment adviser as a permissible activity because it is closely related to banking. 12 C.F.R. 225.28(b)(6)(1). For these reasons, Bank may act as an investment adviser.

The Agency does not object to Bank investing seed money into a mutual fund for which it will act as investment adviser. Both activities are permissible under the Act. However, if the mutual fund that Bank will be investing in is an open-ended investment, this activity is not permissible for national banks. There is some question as to whether it would be acceptable for a closed-end investment. This is a determination the Office of the Comptroller of the Currency must make. See OCC Conditional Approval Letter 222, Board of Governors of the Federal Reserve System v. Investment Company Institute, 450 U.S. 46 (1981). In cases when a state chartered bank plans to engage in an activity that is impermissible for a national bank, the state chartered bank needs to obtain approval from the Federal Deposit Insurance Corporation before engaging in that activity. See 12 C.F.R. 362.