



Bureau of Residential Finance
Thrift Division

[Directors
Advisory, Honorary, Emeriti]

To: Illinois State-Chartered Savings Banks

Date: January 30, 2003

Re: Advisory or Honorary Directors and Directors Emeriti

The Savings Bank Act (Act) permits the board of directors of a savings bank to appoint advisory and honorary directors and directors emeriti (hereinafter referred to collectively as “advisory director”) and permits the savings bank to provide reasonable compensation for them. 205 ILCS 205/1007.55 and 1008(a)(6).

The Position of Advisory Director

While the Act does not expressly define the position of advisory director, it does state that an *advisory director* is not a *director*. *Id.* at 1007.55. Clearly, this exclusion requires that the position of *advisory director* be distinguished from that of *director*.

In this connection, the Act provides a functional definition of the position of *director*: directors shall manage the business and affairs of the savings bank, shall occupy a fiduciary relationship to the savings bank, and shall be elected by the stockholders. *Id.* at 4008 and 4010. Given the exclusion of *advisory director* from the definition of *director*, as stated above, the Act must be read to impose conditions on the position of *advisory director* to assure that it is distinguished from the position of *director*. Therefore, an *advisory director* is permissible only if he or she meets the following conditions:

- 1) the advisory director shall not be elected by the members of the savings bank;
- 2) the advisory director shall not be authorized to vote on matters before the board of directors and shall not exercise the power of final decision in matters concerning the business of the savings bank;
- 3) the advisory director shall not function as a savings bank director, but rather shall provide only general policy advice to the savings bank’s board of directors; and
- 4) the advisory director shall be identified an advisory director, not as a director or officer.

These conditions are similar to those that apply to many other depository institutions. See, for example, Illinois Banking Act Interpretive Letter 90-18 (September 13, 1990), section 7.2004 of the regulations of the Comptroller of the Currency and section 215.2(d) of Federal Reserve Board Regulation O. 12 CFR 215.2.

Supervision of Advisory Directors

As described above, the Act distinguishes advisory directors of a savings bank from directors of the savings bank. Therefore, the provisions of the Act that apply to a director and the board of directors generally do not apply to an advisory director (unless the Commissioner determines that the advisory director is in fact functioning as a director). Accordingly, an advisory director generally does not occupy the fiduciary position prescribed by section 4010 of the Act. *Id.* at 4010. However, an advisory director must act in good faith and consistently with safe and sound operation of the savings bank. Other provisions that generally would be inapplicable to advisory director are the Act's bonding requirements and Act's prohibition against serving more than one mutually owned savings bank. *Id.* at 4009 and 4010.

Notwithstanding, an advisory director remains within the purview of the Commissioner's authority and, as stated, must act in good faith and consistently with safe and sound operation of the savings bank. Accordingly, an advisory may be subject to examination and may be an institution affiliated party. Specifically, the Act mandates that the Commissioner examine the books, records, operations, and affairs of an individual whose relationship with the savings bank may adversely affect the affairs, activities, and safety and soundness of the savings bank. *Id.* at 9004(a). If the Commissioner determines that these circumstances exist with respect to an advisory director, the Act requires the Commissioner to examine the books, records, operations, and affairs of that advisory director. Also, an advisory director may be an institution affiliated party of the savings bank if he or she is an agent of or participates in a significant way in the affairs of the savings bank. *Id.* at 11005. As an institution affiliated party (or as an individual subject to examination), an advisory director is subject to the Commissioner's supervisory and enforcement authority under the Act.

Also, it is important to note that advisory directors of savings bank holding companies are subject to the above-described authority of the Commissioner.

Other Applicable Law

Federal Banking Law Savings banks and prospective advisory directors should determine the extent to which federal banking laws apply to the advisory director. The advisory director may be subject to the general supervisory authority of the savings bank's federal banking regulator. Also, depending on the applicable definition of "director," some federal laws appear not to apply generally to advisory directors (see, for example, Regulation O of the Federal Reserve Board, 12 CFR 215.2(d)), while others may apply to advisory directors (see, for example, the Depository Institutions Management Interlocks Act and regulations, 12 USC 3201(4) and 12 CFR 212.2(j) and 348.2(j)). The savings bank should contact its federal regulator for definitive information.

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Securities Law If the savings bank or an affiliate, director, officer, employee, or shareholder is subject to federal or state securities law as a publicly traded company or otherwise, the savings bank should determine the extent to which securities laws may apply to an advisory directors.

Personal Liability A prospective advisory director may wish to seek advice of counsel on whether any aspect of the advisory directorship may expose the advisory director to liability, including potential liability for the actions of board of directors. Relevant factors may include, but may not be limited to, the manner in which the advisory director is compensated, is identified in corporate documents, participates in board meetings, or influences the voting or decision-making process. See, for example, *The Director's Book* published by the Office of the Comptroller of the Currency, and Charles M. Moore and Leonard H. Plog II, *Honorary Directors of Financial Institutions: More Liability, Less Honor*, 109 *Banking Law Journal* 233 (May – June, 1992).

If you have questions regarding this memorandum, please contact Robert A. Stearn, Senior Counsel, Thrift Division at (312) 793-1454 or rstearn@bre.state.il.us.

[Note: Please be reminded that Confidential Supervisory Information under Section 9012 of the Savings Bank Act may not be disclosed to an advisory director. Revised January 13, 2015.]