

MEMORANDUM OF LEGAL INTERPRETATION

To: The Members and Personnel of the
Department of Financial Institutions

From: The Policy and Interpretation Committee

Re: Bank Holding Company Examination

Date: July 21, 1987

Revised: August 8, 1996

Revised: February 2, 1999 (minor wording changes)

A question has been presented to the Policy and Interpretation Committee regarding the Department of Financial Institutions authority to examine Bank Holding Companies which control Indiana State Chartered Banks.

IC 28-1-18.2-1 "Affiliate" means any of the following:

- (1) Any company that controls a bank and any other company that is controlled by the company that controls a bank.
- (2) A bank subsidiary of a bank.
- (3) Any company:
 - (A) that is controlled directly or indirectly, by a trust or other wise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the bank or any company that controls the bank;
or
 - (B) in which a majority of its directors or trustees constitute a majority of the persons holding any such office with a bank or any company that controls the bank;
- (4) Any:
 - (A) company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the bank or any subsidiary or affiliate of the bank; or
 - (B) investment company with respect to which a bank or any affiliate of a bank is an investment advisor (as defined in section 2(a) (20) of the Investment Company Act of 1940 (15 U.S.C. 80a)).
- (5) Any corporation that the department determines by regulation or order to have a relationship with the bank or any subsidiary or affiliate of the bank, such that covered transactions by the bank or its subsidiary with that company may be affected by the relationship to the detriment of the bank or its subsidiary.

IC 28-1-18.2-3 states in part that: "In making the examination of a bank or trust company, the Department shall include an examination of the affairs of all the bank or trust company's affiliates necessary to disclose fully the relations between the bank or trust company and its affiliates, and the effect of those relations upon the affairs of the bank or trust company".

IC 28-1-18.2-4 states in part that: "in making the examination of an affiliate of a bank or trust company, the Department has the same powers with respect to such examination as are conferred upon it in the examination of the affairs of a bank or trust company by IC 28-11-3."

CONCLUSION: A Bank Holding Company that owns or controls, directly or indirectly, a majority of the shares of capital stock of a bank or trust company, is clearly an affiliate of that bank or trust company and would be subject to examination by the Department. In order for the Department to determine the relationship between the bank or trust company and its affiliates and the effect of the relationship upon the affairs of the bank or trust company, the legislature has granted the Department the same powers with respect to the examination of an affiliate, as are conferred upon it in the examination of the affairs of a bank or trust company by IC 28-11-3.