IT 10-0001-PLR 02/09/2010 APPORTIONMENT – FINANCIAL ORGANIZATIONS

Private Letter Ruling: If a disregarded entity is a bank, the owner of the entity is a bank which cannot be included in a unitary business group with a non-financial organization, and any subsidiary of the owner is deemed to be a financial organization as a subsidiary of a bank.

February 9, 2010

Dear:

This is in response to your letter dated November 19, 2009, in which you request a Private Letter Ruling on behalf of COMPANY1, Inc. and its affiliated group, COMPANY2, LP, and COMPANY3. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of 2 Ill. Adm. Code 1200.110 appears to be contained in your request. The Private Letter Ruling will bind the Department only with respect to COMPANY2 LP, COMPANY4 LLC, COMPANY3, and the combined group that includes COMPANY1, Inc. Issuance of this ruling is conditioned upon the understanding that COMPANY1, Inc. and/or any related taxpayer(s) is not currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

The facts and analysis as you have presented them are as follows:

COMPANY5 LLP, as an authorized agent for COMPANY1, Inc. ("COMPANY1") and all subsidiaries (collectively "COMPANY1 affiliated group"), requests a Private Letter Ruling in accordance with 2 Ill. Adm. Code 1200.110 regarding: (1) the classification of COMPANY2 LP ("COMPANY2") and COMPANY4 LLC ("COMPANY4") as financial organizations pursuant to 35 ILCS 5/1501(a)(8) and, thus, subject to the apportionment provisions set forth in 35 ILCS 5/304(c)(3); (2) the treatment of COMPANY2 in the determination of the unitary group for COMPANY1 under 35 ILCS 5/1501(a)(27); and (3) the treatment of COMPANY3 ("COMPANY3") as a non-financial organization subject to the apportionment provisions set forth in 35 ILCS 5/304(a)(3) and in the determination of the unitary group for COMPANY1 under 35 ILCS 5/1501(a)(27).

DISCLOSURES

In accordance with 2 Ill. Adm. Code 1200.110(b)(3), the subjects of this request are not being examined as part of an audit by the Illinois Department of Revenue ("Department") and they are not pending in litigation in a case involving the taxpayer or a related taxpayer.

In accordance with 2 Ill. Adm. Code 1200.110(b)(4), to the best of the knowledge of both the taxpayer and the taxpayer's representative, the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor. In addition, the taxpayer and its representatives have not previously submitted the same or a similar issue to the Department and withdrawn it before a letter ruling was issued.

TAXPAYER

The taxpayer for purposes of this request includes COMPANY1 and its affiliated group, COMPANY2 and COMPANY3 as outlined in the "Statement of Facts" section below.

TAX YEAR

This ruling is requested for the tax year ending December 31, 2009 and all subsequent tax years.

STATEMENT OF FACTS

Organizational Structure

COMPANY1 is a corporation organized under the law of STATE1, and it is the parent company of the COMPANY1 affiliated group. For purposes of this request, COMPANY1's affiliated companies have not been listed. COMPANY1 owns a 79.7% limited partnership interest in COMPANY2, which is a COUNTRY exempted limited partnership treated as a partnership for federal income tax purposes.COMPANY1 also owns a 100% interest in COMPANY6, LLC ("COMPANY6"), a single member limited liability company that is disregarded for federal income tax purposes and taxed as a division of COMPANY1. COMPANY6 in turn owns a 0.08% general partnership interest in COMPANY2. COMPANY1 also owns a 100% interest in COMPANY7. ("COMPANY7"), a COUNTRY entity disregarded for federal income tax purposes. COMPANY7 owns 100% of COMPANY8, Inc. ("COMPANY8"), a corporation organized under the laws of STATE1, which in turn owns a 0.61% limited partnership interest in COMPANY2. The remaining 19.61% limited partnership interest in COMPANY2 is held by several unrelated partners, which are mostly banks. For Illinois purposes, COMPANY1, COMPANY6, COMPANY7, and COMPANY8 are all members of the same unitary business group and will file as part of COMPANY1's combined Illinois corporate income tax return. COMPANY1, COMPANY6, COMPANY7, and COMPANY8 are not financial organizations for Illinois corporate income tax purposes.

COMPANY2 does not conduct any activities or operations on its own, but it holds a 100% membership interest in COMPANY4, a STATE2 limited liability trust company disregarded for federal income tax purposes and treated as a division of COMPANY2. COMPANY2 also owns 100% of COMPANY3. COMPANY3 is a corporation organized under the laws of STATE1. COMPANY3 developed the credit default swap ("CDS") risk management framework, operational processes, and infrastructure used in COMPANY4's clearing operations.

The following diagram illustrates the relevant portion of the COMPANY1 affiliated group organizational structure: [diagram omitted]

COMPANY1

COMPANY1 owns and operates an internet-based exchange platform which serves as a marketplace for the global futures and over-the-counter ("OTC") markets (the "Exchange"). Via the Exchange, COMPANY1 serves as an OTC market operator. COMPANY1 also operates the Exchange on behalf of affiliates who operate regulated futures exchanges. The Exchange provides a marketplace for buyers and sellers of certain commodities contracts, financial contracts, and other derivative contracts in the futures and OTC markets to meet and execute transactions on a real-time basis.

Members (i.e. customers) may access the Exchange via the internet through COMPANY1's website, through a dedicated line between the customer's server and COMPANY1's server, or

by co-location of customer's server at COMPANY1's server location.

Each member of the Exchange is required to enter into an agreement (the "Exchange Agreement") with COMPANY1 prior to accessing the Exchange. The Exchange Agreement details the rights and obligations of both the member and COMPANY1, and provides details related to services provided by COMPANY1 and the associated pricing, margin requirements, default events, trade execution and settlement protocols.

Per the terms of the Exchange Agreement, COMPANY1 may generate revenue from a variety of sources. Each member is charged a minimum fee for access to the information and data available on the Exchange ("Minimum Fees"). Additionally, whenever a trade is executed on the Exchange, the trading member is obligated to pay COMPANY1 a commission for the successful execution of the trade ("Trading Commissions"). COMPANY1 also charges a fee for providing an electronic trade confirmation service ("Trade Confirmation Fees").

COMPANY1 earns receipts primarily from Minimum Fees, Trading Commissions and Trade Confirmation Fees.

COMPANY4

COMPANY4 is a STATE2 limited liability trust company that is disregarded for federal income tax purposes and taxed as a division of COMPANY2 was formed on December XX, 200X, to act as a clearing house for CDS transactions. COMPANY4's activities as a clearing house and central counterparty for CDS transactions are subject to regulation by multiple regulators including the BANKING DEPARTMENT and the Board of Governors of the Federal Reserve System.[1] Although it operates pursuant to exemptive relief from the U.S. Securities and Exchange Commission ("SEC") and the U.S. Treasury Department, it is required to comply with certain requirements to satisfy the conditions of the exemptive relief. Specifically, COMPANY4 cannot accept deposits from the general public and may only act as a fiduciary for its participants.

COMPANY4 began processing CDS transactions on March XX, 200X. COMPANY4 has developed a market structure that brings transparency, capital efficiency and mitigation of counterparty credit risk by acting as a central counterparty to clear CDS transactions. COMPANY4 is designed to fit the workflow and operations that exist within the industry while addressing the operational and risk management needs of the credit derivatives market, as well as calls by regulators and policy makers for systemic risk reduction. COMPANY4 is open to all qualifying buy-side and sell-side institutions. Membership is available to institutions that meet the financial and eligibility standards set forth in the clearing house rules. Initial COMPANY4 members include several large scale financial institutions.

COMPANY2

COMPANY2 is a COUNTRY exempted limited partnership that does not conduct any activities or operations and owns 100% of both COMPANY3 and COMPANY4. COMPANY2's ownership structure is as follows: 0.08% is owned through a general partner interest held by COMPANY6, 0.61% is owned through a limited partner interest held by COMPANY8, 79.7% is owned through a limited partnership interest held by COMPANY1, and the remaining 19.61%

limited partnership interest is held by several unrelated partners, which are mostly banks.

COMPNAY3

COMPANY3 is a STATE1 corporation which is owned 100% by COMPANY2. COMPANY3 is a US clearing house headquartered in CITY, Illinois, that provides clearing and settlement services to its participants for trades in futures contracts, options on futures contracts and OTC transactions executed on various exchanges and marketplaces, similar to those operated by COMPANY1. COMPANY3 also provides consulting services and transaction processing services for its participants and other marketplaces.

COMPANY3 earns revenue primarily from the licensing of certain intangible property and providing certain services to affiliates. On March XX, 200X, COMPANY3 granted to COMPANY4 a nonexclusive, irrevocable, worldwide right and license in COMPANY9 ("COMPANY9") related to the technology, risk management procedures and business process, in connection with the development and operations of a global CDS clearing business ("CDS Solution").

COMPANY3 also develops the CDS risk management framework, operational processes, and infrastructure used in COMPANY4's clearing operations.

RULING REQUESTED

1. Whether COMPANY2 should be classified as a financial organization for Illinois purposes?

2. Whether COMPANY1 should treat the partnership income from COMPANY2 as non-unitary partnership income?

3. Whether COMPANY3 should be classified as a non-financial organization for Illinois purposes?

DISCUSSION

A. Relevant Authority

The Illinois Income Tax Act ("IITA") Section 102 provides that, "except as otherwise expressly provided or clearly appearing from the context, any term used in the IITA shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year."

Pursuant to 86 Ill. Adm. 100.9750(e), "any entity treated as a trust for federal income tax purposes under Treas. Reg. Section 301.7701-4 is a trust for all purposes of the IITA." Treasury Reg. Section 301.7701-4 does not specifically address if a trust can elect to be disregarded from its owner for federal tax purposes. However, in an Internal Revenue Service ("IRS") Letter Ruling 200339028, it was determined that a trust, as defined under Treas. Reg.

Section 301.7701-4, with a single owner can elect to be disregarded as an entity separate from its owner for federal income tax purposes.

IITA Section 1501(a)(8)(B)(i) defines a "financial organization" as being "any entity that is regulated by the Comptroller of the Currency under the National Bank Act, or by the Federal Reserve Board, or by the Federal Deposit Insurance Corporation."

86 Ill. Adm. Code 100.9710(e) defines the term "bank" to include the following entities: any entity that is regulated by the Comptroller of the Currency under the National Bank Act, or by the Federal Reserve Board, or by the Federal Deposit Insurance Corporation. Under 86 Ill. Adm. Code 100.9710(e)(1)(B), an entity regulated by the Federal Reserve Board is defined as "a member of the Federal Reserve System under the provisions of 12 USC 222 or 12 USC 321."

Illinois General Information Letter ("GIL") IT 04-0038 ruled that a Subchapter S corporation, its qualifying Subchapter S corporation subsidiary ("Q-Sub"), and a single-member LLC ("SMLLC") that has elected to be disregarded for federal tax purposes were treated as a single Subchapter S corporation for Illinois income tax purposes. The Q-Sub operated a regional airline with commercial carriage of passengers and freight, while the SMLLC owned aircraft engines and parts that were leased solely to the Q-Sub. The Q-Sub and SMLLC had operations in several states, one of which was Illinois. The S-Corp.'s only activity was the ownership of the Q-Sub and SMLLC, with management seated in Wisconsin. The letter discusses the application of 86 Ill. Adm. Code 100.9750, stating that an entity treated as a corporation for federal income tax purposes must be treated as a corporation for all purposes of the IITA, and that an entity that elects not to be treated as a corporation separate and distinct from its owners is not a corporation separate and distinct from its owners for Illinois income tax purposes. As a result, the business income of the Q-Sub and SMLLC is considered to be the business income of the S-Corp, and the S-Corp was required to apportion the income to Illinois pursuant to the transportation services provisions in IITA Section 304(d).

IITA Section 304(a) provides apportionment provisions for tax years ending on or after December 31, 1998, and except as otherwise provided by Section 304, "persons other than residents who derive business income from this State and one or more other states shall compute their apportionment factor by weighing their property, payroll, and sales factors as provided in subsection (h) of this Section." For taxable years ending on or after December 31, 2000, a single sales factor is used.

IITA Section 304(c)(3) provides apportionment provisions for financial organizations. "For taxable years ending on or after December 31, 2008, the business income of a financial organization shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is its gross receipts from sources in this State or otherwise attributable to this State's marketplace and the denominator of which is its gross receipts everywhere during the taxable year. 'Gross receipts' for purposes of this subparagraph (3) means gross income, including net taxable gain on disposition of assets, including securities and money market instruments, when derived from transactions and activities in the regular course of the financial organization's trade or business."

Pursuant to 86 Ill. Adm. Code 100.9710(g) the term "financial organization" under the Illinois

Income Tax Act includes any person that is owned by a bank (within the meaning of subsection (d)(1) of this Section or subsection (e) of this Section) or by a bank holding company (within the meaning of subsection (f) of this Section). Under IITA Section 1501(a)(18) a person is defined as "an individual, a trust, estate, partnership, association, firm, company, corporation, limited liability company, or fiduciary."

IITA Section 1501(a)(27) defines a "unitary business group" as "a group of persons related through common ownership whose business activities are integrated with, dependent upon and contribute to each other…[u]nitary business activity can ordinarily be illustrated where the activities of the members are: (1) in the same general line (such as manufacturing, wholesaling, retailing of tangible personal property, insurance, transportation or finance); or (2) are steps in a vertically structured enterprise or process (such as the steps involved in the production of natural resources, which might include exploration, mining, refining, and marketing); and, in either instance, the members are functionally integrated through the exercise of strong centralized management."

The term "common ownership" as it relates to corporations is defined under IITA Section 1501(a)(27) as being the "direct or indirect control or ownership of more than 50% of the outstanding voting stock of the persons carrying on the unitary business activity." It goes on to explicitly state that, "[i]n no event, however, will any unitary business group include members which are ordinarily required to apportion business income under different subsections of Section 304…[i]f a unitary business group would, but for the preceding sentence, include members that are ordinarily required to apportion business income under different subsections of Section 304, then for each subsection of Section 304 for which there are two or more members, there shall be a separate unitary business group composed of such members."

Pursuant to 86 Ill. Adm. Code 100.5270(b), combined base income allocable to Illinois consists of "the sum of the combined business income or loss apportioned to Illinois plus the combined nonbusiness income or loss allocated to Illinois plus the combined nonunitary partnership income or loss allocated to Illinois, less the combined net loss deduction."

B. COMPANY2's Classification for Illinois Purposes

The IRS has issued a private letter ruling, IRS PLR 200339028, June 23, 2003, opining that a trust, as defined under Treas. Reg. Section 301.7701-4, can elect to be disregarded as an entity separate from its owner for federal tax purposes. As such, COMPANY4 has elected to be disregarded as an entity separate from its owner for federal income tax purposes. For IITA Section 102, any term used in the IITA has the same meaning as when used in a comparable context of the IRC. 86 Ill. Adm. Code 100.9750(e) also defines a trust for IITA purposes to be any entity that is treated as a trust for federal income tax purposes under Treas. Reg. Section 301.7701-4. Since a trust under Treas. Reg. Section 301.7701-4 can elect to be a disregarded entity for federal income tax purposes, a trust as defined under 86 Ill. Adm. Code 100.9750(e) also maintains its disregarded entity status for purposes of determining the Illinois income tax.

Illinois should follow the federal classification and treat COMPANY4 as a disregarded entity for Illinois income tax purposes.

IITA Section 1501(a)(8) defines a financial organization as being "any entity that is regulated

by the Comptroller of the Currency under the National Bank Act, or by the Federal Reserve Board, or by the Federal Deposit Insurance Corporation." An entity regulated by the Federal Reserve Board is defined under 86 Ill. Adm. Code 100.9710(e)(1)(B) as "a member of the Federal Reserve System under the provisions of 12 USC 222 or 12 USC 321." COMPANY4 is regulated by the Federal Reserve System under the provisions of 12 USC 321 and would be deemed a financial organization for Illinois purposes, were it to be recognized as a regarded entity.

As a financial organization, COMPANY4, were it a regarded entity, would be subject to the apportionment provisions in IITA Section 304(c)(3), which provides for apportionment by sales factor. As concluded in the Department's general information letter, IT-04-0038-GIL, an entity electing to be disregarded from its sole owner shall be treated as the owner for purposes of the application of the apportionment provisions of IITA Section 304.

As a result of COMPANY2's ownership of COMPANY4, COMPANY2 is subject to the financial organization apportionment provisions set forth in IITA 304(c)(3).

C. Treatment of COMPANY2 for Purposes of Computing COMPANY1's Illinois Income Tax Liability

As stated in the Statement of Facts, COMPANY1 is not a financial organization under IITA Section 1501(a)(8) or 86 Ill. Adm. Code 100.9710. As such, it is not subject to the financial organization apportionment provisions contained in IITA Section 304(c)(3) and is, instead, subject to the general apportionment rules under IITA Section 304(a). Since COMPANY1 is subject to the general apportionment rules, while COMPANY2 is subject to the financial organization apportionment formula, COMPANY1 and COMPANY2 are not capable of being part of the same unitary business group as defined under IITA Section 1501(a)(27).

Pursuant to 86 Ill. Adm. Code 100.5270(b), combined base income allocable to Illinois is the sum of the combined base income or loss apportioned to Illinois, plus the combined nonbusiness income or loss allocated to Illinois, plus the combined nonunitary partnership income or loss allocated to Illinois. In calculating COMPANY1's apportionable income to Illinois, COMPANY1 will subtract its share of COMPANY2's business income or loss from its base income subject to apportionment. COMPANY1 will then add any of its share of COMPANY2s business income or loss that is directly allocable to Illinois as nonunitary partnership income or loss.

D. Treatment of COMPANY3 for Purposes of Computing the Illinois Income Tax Liability

As stated in the facts, COMPANY3 is not a financial organization under IITA Section 1501(a)(8) or 86 Ill. Adm. Code 100.9710. COMPANY3 is owned directly by COMPANY2. COMPANY2 as legally formed, is not a financial organization under IITA Section 1501(a)(8)(B)(i) or 86 Ill. Adm. Code 100.9710(g). Only COMPANY4 would be considered a financial organization under these provisions as it is a bank. Although COMPANY2's ownership of COMPANY4 subjects COMPANY2 to the financial organization's apportionment provisions contained in IITA Section 304(c), it does not change the legal characterization or status of COMPANY2 as not qualifying nor considered a bank. The plain language of 86 Ill.

Adm. Code 100.9710 looks to the legal entity that is owned by a bank for purposes of classifying such entity as a financial organization pursuant to IITA Section 1501(a)(8)(B)(i) or 86 Ill. Adm. Code 100.9710(g).

Since COMPANY3 is directly owned by COMPANY2, and COMPANY2 is not regulated nor classified as a bank, COMPANY3 would not be subject to the financial organization provisions and instead would be subject to the general apportionment rules of IITA Section 304(a). Since COMPANY3 is subject to the general apportionment formula, while COMPANY2 is subject to the financial organization apportionment formula, COMPANY3 and COMPANY2 would not be part of a unitary business group as provided under IITA Section 1501(a)(27).

Without the presence of IITA Section 304(e), which states that "a unitary business group cannot include members that are required to apportion business income using different apportionment formulas," COMPANY3, COMPANY2, and COMPANY1 would be considered a unitary business group due to their common ownership and integrated business activities. The requirement of COMPANY2 to be subject to the financial organization apportionment provisions would not prevent COMPANY3 from being included with COMPANY1 in its unitary business group. As provided in the "Statement of Facts" section, COMPANY3, COMPANY2, and COMPANY1 are in the same general lines of business. COMPANY3 provides support to both the operations of COMPANY1 and COMPANY2 through COMPANY4. COMPANY3 provides clearing and settlement services to its participants for trades in futures contracts, options on futures contracts, and OTC transactions executed on electronic marketplaces similar to those operated by COMPANY1. COMPANY3 also licenses the rights to COMPANY4 to use COMPANY9 in connection with the development and operations of a CDS Solution. COMPANY3 also develops the CDS risk management framework, operational processes, and infrastructure used in COMPANY4's clearing operations. Based on these integrated business activities, COMPANY3 and COMPANY1 would be members of the same unitary business group.

RULING

Ruling 1 Whether COMPANY2 is a Financial Organization

Section 1501(a)(8) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/1501(a)(8)) defines the term "financial organization" as follows.

(A) The term "financial organization" means any bank, bank holding company, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, currency exchange, cooperative bank, small loan company, sales finance company, investment company, or any person which is owned by a bank or bank holding company. For the purposes of this Section a "person" will include only those persons which a bank holding company may acquire and hold an interest in, directly or indirectly, under the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841, et seq.), except where interests in any person must be disposed of within certain required time limits under the Bank Holding Company Act of 1956.

(B) For purposes of subparagraph (A) of this paragraph, the term "bank" includes (i) any entity

> that is regulated by the Comptroller of the Currency under the National Bank Act, or by the Federal Reserve Board, or by the Federal Deposit Insurance Corporation and (ii) any federally or State chartered bank operating as a credit card bank.

Regarding this section, Department of Revenue Regulations Section 100.9710(e)(1)(B) states:

> An "entity regulated by the Federal Reserve Board" means a member of the Federal Reserve System under the provisions of 12 U.S.C. 222 or 12 U.S.C. 321.

IITA Section 102 states:

> Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year.

Pursuant to Section 102, Department Regulations Section 100.9750(e) provides that an entity that is treated as a "trust" for federal income tax purposes under Treas. Reg. § 301.7701-4 shall be considered a trust for all purposes of the IITA.

Under IITA Section 203, the starting point in the computation of Illinois base income for taxpayers other than individuals and exempt organizations is federal taxable income. In the case of a partnership, taxable income includes separately stated items. 35 ILCS 5/203(e)(2)(H).

Under Treasury Regulations § 301.7701-2(a), a business entity with a single owner is either classified as a corporation or is disregarded as an entity separate from its owner. 26 CFR 301.7701-2(a). If a business entity is disregarded as an entity separate from its owner, then its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner. Accordingly, the items of income, gain, loss, and deduction of the disregarded entity are considered the items of the owner and taken into account in computing the federal taxable income of the owner.

Under IITA Sections 102 and 203, the federal treatment of a disregarded entity and its owner applies for Illinois income tax purposes. An entity that is disregarded for federal income tax purposes is disregarded as an entity for Illinois purposes, and the items of base income of the disregarded entity are considered the items of the owner and are taken into account in computing the Illinois base income of the owner. The same treatment extends to the determination of the apportionment factor of the owner of a disregarded entity. The activities of the disregarded entity are considered the activities of the owner for purposes of applying the apportionment provisions of Article 3 of the IITA.

Your letter represents that COMPANY4 is disregarded as an entity separate from COMPANY2 pursuant to Treas. Reg. § 301.7701-3(b)(1)(ii). In addition, you represent that COMPANY4 is a member of the Federal Reserve System under the provisions of 12 USC 321. Based on that representation, COMPANY4 is also disregarded as an entity separate from COMPANY2 for Illinois income tax purposes, and the activities of COMPANY4 are considered to be the activities of COMPANY2 for purposes of applying the apportionment provisions of Article 3. Therefore, COMPANY2 is considered the entity regulated by the Federal Reserve Board under Department Regulations Section 100.9710(e)(1)(B) and as a result a bank under IITA Section 1501(a)(8)(B) and

Regulations Section 100.9710(e). As a bank, COMPANY2 is required to use the apportionment formula prescribed under IITA Section 304(c).

Ruling 2 Whether COMPANY2 is a Non-unitary Partnership

IITA Section 1501(a)(27) includes the following rule in the determination of a unitary business group:

> In no event, however, will any unitary business group include members which are ordinarily required to apportion business income under different subsections of Section 304 except that for tax years ending on or after December 31, 1987 this prohibition shall not apply to a unitary business group composed of one or more taxpayers all of which apportion business income pursuant to subsection (b) of Section 304, or all of which apportion business income pursuant to subsection (d) of Section 304, and a holding company of such single-factor taxpayers (see definition of "financial organization" for rule regarding holding companies of financial organizations). If a unitary business group would, but for the preceding sentence, include members that are ordinarily required to apportion business income under different subsections of Section 304, then for each subsection of Section 304 for which there are two or more members, there shall be a separate unitary business group composed of such members. For purposes of the preceding two sentences, a member is "ordinarily required to apportion business income" under a particular subsection of Section 304 if it would be required to use the apportionment method prescribed by such subsection except for the fact that it derives business income solely from Illinois.

Your letter represents that COMPANY1 is not a financial organization as defined in IITA Section 1501(a)(8), and that COMPANY1 is required to apportion business income under IITA Section 304(a). As determined above, COMPANY2 is a financial organization required to apportion business income under IITA Section 304(c). Therefore, based on your representation and the determination above, COMPANY1 and COMPANY2 are not members of the same unitary business group. It follows that COMPANY1's distributive share of income from COMPANY2 is apportioned under the provisions of IITA Section 305.

Ruling 3 Whether COMPANY3 is a Non-Financial Organization

IITA Section 1501(a)(8) includes within the meaning of the term "financial organization" any person which is owned by a bank or bank holding company. Regarding this provision, Department Regulations Section 100.9710(g) states:

> Special Rule for Persons Owned by a Bank or Bank Holding Company. The term "financial organization" under the Illinois Income Tax Act includes any person that is owned by a bank (within the meaning of subsection (d)(1) of this Section or Subsection (e) of this Section) or by a bank holding company (within the meaning of subsection (f) of this Section). For purposes of this provision, the term "person" includes only those persons in which a bank holding company may acquire and hold an interest, directly or indirectly, under the provisions of the Bank Holding Company Act of 1956 (12 USC 1841) and Regulation Y promulgated thereunder by the Board of Governors of the Federal Reserve System (12 CFR 225), and does not include any person that must be disposed of within certain required time limits under the Bank Holding Company Act of 1956. Under this provision, an entity that would not otherwise be a "financial

> organization" is deemed to be a financial organization for any period during which it is owned by a bank or bank holding company. For example, prior to the enactment of Public Law 106-102, 12 USC 1843(c)(8) authorized bank holding companies to own insurance companies in certain circumstances. 12 USC 1843(c)(8) allows a bank holding company that owned an insurance company prior to November 12, 1999, to continue to own that insurance company. An insurance company owned by a bank holding company is a "financial organization" for purposes of the IITA, even though the insurance company would not otherwise be a financial organization. The fact that an entity that is not owned by a bank holding company would be a financial organization under this provision if it were owned by a bank holding company, or that the entity in the past may have been owned by a bank holding company and therefore characterized as a financial organization, is irrelevant to the determination of whether the entity is a financial organization.

Your letter represents that COMPANY2 owns all of the stock of COMPANY3. As determined above, COMPANY2 is a bank within the meaning of Department Regulations Section 100.9710(e). Therefore, COMPANY3 is owned by a bank and on that basis is a financial organization under IITA Section 1501(a)(8) and Department Regulations Section 100.9710(g).

This ruling shall bind the Department for the taxable year ending December 31, 2009 and subsequent taxable years, except as limited pursuant to 2 Ill. Adm. Code 1200.110(d) and (e). The facts upon which this ruling is based are subject to review by the Department during the course of any audit, investigation or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

[1] COMPANY4 received regulatory approval from the Board of Governors of the Federal Reserve System on March XX, 200X to become a member of the Federal Reserve System under the provisions of 12 USC 321.