State of Utah
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES
Protecting Investors; Promoting Commerce

Michael O. Leavitt
Governor
Douglas C. Borba
Executive Director
S. Anthony Taggart
Division Director

160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
(801) 530-6600 • FAX (801) 530-6980
e-mail: security@br.state.ut.us
http:\\www.commerce.state.ut.us

December 23, 1999

Michael R. Renetzky
Lord, Bissell & Brook
115 South La Salle St.
Chicago, IL 60603

Re: **Federal Savings Bank/Investment Adviser Representative Registration**
Request for Interpretive Opinion
File # B00138281

Dear Mr. Renetzky:

This letter is in response to your request of April 30, 1999, for an interpretive opinion from the Utah Division of Securities ("Division"). You asked the Division to opine whether a person soliciting trust services for a Federal Savings Bank needs to be registered with the State of Utah as an investment adviser representative.

Analysis

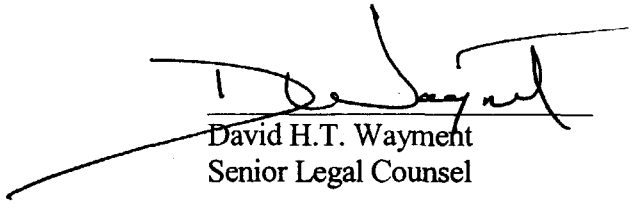
Under Utah law, the term " 'investment adviser' does not include . . . (ii) a bank, savings institution, or trust company." UCA § 61-1-13 (15)(c). Under Utah law, the term bank includes a federal savings bank. Historically, Utah has not required banks to register as investment advisers and has not required the employees of banks to register as investment adviser representatives, even when those employees were otherwise within the definition of an investment adviser.

However, subsequent to the passage of the National Securities Markets Improvement Act of 1996 ("NSMIA"), federal savings banks are considered to be "federal covered advisers." Moreover, a federal covered adviser may not "employ . . . an investment adviser representative having a place of business in this state, unless such investment adviser representative is licensed under this chapter or is exempt from licensing." UCA § 61-1-3(4)(a)(ii). Accordingly, after the passage of NSMIA, it is now possible to argue that employees of federal savings banks, who have a place of business in Utah and are engaged, for compensation, in soliciting trust services for the bank, might be subject to licensure as investment adviser representatives.

So long as the activities of the employees in question are limited to traditional trust services, the Division chooses not to interpret NSMIA as expanding the licensing authority of the Division. In other words, the Division will not require employees of federal savings banks, who are engaged in providing traditional trust services for those banks, to become licensed as investment adviser representatives.

The Division notes however, that the enactment of Public Law 106-102 on November 12, 1999, repeals Sections 20 and 32 of the Banking Act of 1933 (12 U.S.C. §§ 377, 78, commonly known as the "Glass-Steagal Act"). The repeal of these sections of Glass-Steagal may allow banks to expand into areas formerly forbidden and historically within the realm of investment advisers and/or broker-dealers. This opinion letter has no value as to any such expanded activities.

Respectfully,



David H.T. Wayment
Senior Legal Counsel

LORD, BISSELL & BROOK

115 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603

(312) 443-0700
CABLE: LOWIRCO CGO
TELEX: 25-3070
FACSIMILE: (312) 443-0336

LOS ANGELES OFFICE
300 SOUTH GRAND AVENUE, 8TH FLOOR
LOS ANGELES, CALIFORNIA 90071-3200
(213) 485-1500
FACSIMILE: (213) 485-1200

ATLANTA OFFICE
ONE ATLANTIC CENTER
1201 W. PEACHTREE STREET, SUITE 3700
ATLANTA, GEORGIA 30309
(404) 870-4600
FACSIMILE: (404) 872-5547

NEW YORK OFFICE
ONE PENN PLAZA, SUITE 1926
NEW YORK, NEW YORK 10119
(212) 947-4700
FACSIMILE: (212) 947-1202

LONDON OFFICE
LLOYD'S, SUITE 995
ONE LIME STREET
LONDON EC3M 7DQ ENGLAND
0171-327-4534
FACSIMILE: 0171-929-2250

MICHAEL K. RENETZKY
(312) 443-1823

April 30, 1999

Utah Department of Commerce
Department of Securities
Attention: David H.T. Wayment
P. O. Box 14670
Salt Lake City, UT 84115-6760

Re: Federal Savings Bank/Investment Adviser Representative Registration

Ladies and Gentlemen:

We represent a number of federal savings banks which operate trust departments. We are writing to request confirmation that you would not take action against a federal savings bank or paid solicitors of its trust services if they continue to conduct their business as described in this letter without registration of the solicitors as investment adviser representatives in your state.

Federal Savings Banks Are Excluded from the Definition of "Investment Adviser" in Most States, But Not at the Federal Level – The Cause of Confusion

An issue arises due to certain changes in state law in response to the National Securities Markets Improvement Act of 1996 ("NSMIA"). Most states, including your state, substantially adopted the Uniform Securities Act ("USA") amendments in response to the changes affecting investment advisers. In the course of the revisions to the USA in response to NSMIA, there was apparently no particular focus on the fact that under the Investment Advisers Act of 1940, federal savings banks are not treated as "banks" and are, therefore, subject to investment adviser regulation, while the securities laws of virtually all states specifically exclude federal savings banks from investment adviser regulation. Particularly, committee commentary regarding this issue at the North American Securities Administrators Association, does not address this distinction in the treatment of federal savings banks in the context of these amendments. This distinction results in possible confusion (as described below) regarding whether the solicitor of the trust services of a federal savings bank needs to register as an investment adviser representative.

Pre-NSIMIA

Prior to these amendments, because a federal savings bank was not subject to investment adviser regulation by most states, persons who received a fee for solicitation of the trust services of a federal savings bank were not considered to be acting as investment adviser representatives. They, therefore, were not required to register as such in these states. At the same time, a federal savings bank was considered to be an investment adviser under the Investment Advisers Act of 1940, and, therefore, the federal savings bank had to register at the federal level. Because there are not registration provisions at the federal level for investment adviser representatives, persons soliciting trust services on behalf of a federal savings bank were not required to register with any regulator. These activities were, instead, subject to the supervision of the banking regulators. Virtually all states made a specific policy decision that the existing regulation of a federal savings bank was sufficient to insure adequate protection of persons utilizing its trust services, without the need for registration of those persons who solicit for those trust services.

Post NSMIA–The Question Presented

After the passage of NSMIA and after the passage in various states of the amendments to the USA, there appears to be a plausible reading of these revised statutes which would require a person soliciting for the trust services of a federal savings bank to register as an investment adviser representative in certain states. We feel the better reading, however, is one which would not change the policy of each of these states that solicitors for trust services of federal savings banks are not the individuals intended to be regulated as investment adviser representatives by those states. Please see Appendix A, attached.

Discussion

Under the current investment adviser regulatory framework, it is clear that while a federal savings bank is not required to be registered at the federal level (*i.e.* it's trust department manages less than $25,000,000), the federal savings bank is regulated under state law alone and is not subject to investment adviser regulation. Therefore, persons who solicit for its trust services do not come within the registration provisions for investment adviser representatives, because they would not be soliciting on behalf of an investment adviser.

Arguably, based on the amendments to the USA (and the various state laws substantially adopting these amendments), once a federal savings bank surpasses the threshold and is required to be registered at the federal level (*i.e.* has more than $25,000,000 under management or is related to another federal adviser, etc.), these solicitors of trust services could be required to

register as investment adviser representatives in the individual states. The argument would proceed as follows: (i) although the state would not regulate a federal savings bank as an investment adviser, the federal savings bank would be considered a "federal covered adviser" because it is registered at the federal level; (ii) the amendments to the USA as substantially adopted by most states generally require registration as an investment adviser representative of anyone who solicits on behalf of a federal covered adviser; (iii) because the federal savings bank is now considered a federal covered adviser, those same solicitors of trust services would become subject to regulation as investment adviser representatives in these states.

Such a reading, however, would not be faithful to the longstanding policy of most states with respect to not regulating federal savings banks as investment advisers. We believe that because the vast majority of states, including your state, continue to have a policy of not regulating federal savings banks as investment advisers, that it is not the intent of the revised statutes to consider solicitors of trust services of federal savings banks to be acting as investment adviser representatives simply because the federal savings bank (which is exempt under state law) becomes subject to regulation by federal law. Prior to NSMIA, the solicitors of trust services for federal banks would not have been subject to registration in your state. We see no intention on the part of the drafters of the USA, or those persons adopting substantially the form of the amendments to the USA in the various states, to begin regulating persons who solicit trust services for federal savings banks.

Request for Confirmation

Should you desire to discuss this matter, please telephone the undersigned directly at any time. We specifically request confirmation that the amendments to your securities laws in response to NSMIA (which substantially followed the amendments to the USA) were not intended to change your policy of not regulating solicitors of trust services for federal savings banks.

Very truly yours,

LORD, BISSELL & BROOK

By: Michael K. Renetzky

MKR/ds
l-states april 30.wpd