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ARIZONA CORPORATION COMMISSION

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SECURITIES DIVISION
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August 11, 1994

Alan M. Parness, Esq.
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, NY 10038

RE: Dean Witter Reynolds Inc./Certificates of Deposit Issued by
Utah Industrial Loan Companies
A.R.S. § 44-1843(A)(2)

Dear Mr. Parness:

On the basis of the facts set forth in your letter of July 14, 1994, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter. The Division concurs with your opinion that the certificates of deposit are exempt from registration pursuant to A.R.S. § 44-1843(A)(2), as securities "issued by a state bank . . . the business of which is supervised and regulated by an agency of . . . the United States."

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dee Ridgell Harris".

DEE RIDDELL HARRIS
Director of Securities

DRH:lb
Attachment

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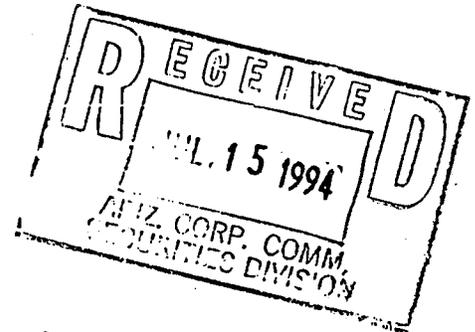
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July 14, 1994

Securities Division
Corporation Commission
1300 West Washington Street
Phoenix, Arizona 85007



Re: Dean Witter Reynolds Inc.
Certificates of Deposit Issued
by Utah Industrial Loan
Corporations
Request for No-Action Letter
Regarding Sections 44-1843(A)(2)
and 44-1843(A)(1)

Dear Sir or Madam:

On behalf of Dean Witter Reynolds Inc. ("DWR"), request is hereby made for a no-action letter as to the availability of the exemptions under Sections 44-1843(A)(2) and/or 44-1843(A)(1) of the Arizona Securities Act (the "Act") for the regular offering and sale, by DWR and certain other dealers registered under the Act (together with DWR, the "Agents"), and in accordance with a program (the "Program") established by DWR, of certificates of deposit ("CDs") issued by Utah-chartered industrial loan corporations (each, an "Issuer").

Description of CD Program

After a credit review by DWR, Issuers accepted into the CD Program enter into a Certificates of Deposit Agency Agreement (an "Agreement"), in substantially the form enclosed herewith, with DWR acting either as sole Agent or as representative of the other Agents (Agents enter into a Certificates of Deposit Participation Agreement with DWR, substantially in the form enclosed herewith). Under the terms of the Agreement, among

other representations, warranties and covenants, Issuers represent and warrant that they meet all regulatory capital standards required by Section 29 of the Federal Deposit Insurance Act (the "FDIA"), 12 U.S.C. § 1831f.¹ The following is a general description of the Program.

All of the CDs are insured by the Federal Deposit Insurance Corporation (the "FDIC"); accordingly, each purchaser of a CD (each, a "Purchaser") will have an aggregate of \$100,000 of coverage for the principal of, and interest or earned discount on, CDs purchased by the Purchaser (aggregated with any other accounts maintained by the Purchaser with the Issuer and required to be aggregated under the FDIA and the FDIC's rules promulgated thereunder). In this connection, note that Section 3 of the Agreement prohibits any Purchaser from purchasing more than 90 CDs (\$90,000 in the case of interest-bearing CDs), so as to assure FDIC insurance coverage of the principal of, and accrued interest or earned discount on, the specific CDs purchased.

In most cases, no individual certificates evidencing the CDs will be issued; rather, in accordance with FDIC recordkeeping rules codified at 12 C.F.R. § 330.4, a "master" CD, in substantially the form annexed to the Agreement as Exhibit B - Part I (for fixed or adjustable rate CDs) or Exhibit B - Part II (for zero coupon CDs), in an aggregate principal amount of all CDs sold of a particular issue, will be issued by the Issuer to "CEDE & CO.," the nominee of The Depository Trust Company ("DTC"), acting as custodian for the Agents. In turn, DTC will maintain records reflecting that the CDs are held for the Agents, each acting as nominee, authorized representative, custodian, or agent for its customers who are the Purchasers, and each Agent will maintain its own records reflecting the actual ownership of the CDs by the respective Purchasers.

DWR and, where applicable, other Agents, will generally offer and sell the CDs on a "best efforts" basis as agents for the Issuer. The specific terms of any CD issue are detailed in a Terms Agreement, substantially in the form of Exhibit A to the Agreement. Commissions for sales of CDs will be paid to the Agents by the Issuer; Purchasers will pay no commissions.

Each CD is in the principal amount of \$1,000 at stated maturity (certain CDs are sold at a discount on a "zero coupon" basis), and no additions are permitted to CDs. Withdrawals are permitted only in the case of death or adjudication of

¹ In rare instances, certain Issuers not meeting such standards will have received special waivers from the Federal Deposit Insurance Corporation under Section 29 to issue CDs.

incompetence (in which case principal and accrued interest or earned discount may be withdrawn in full, without penalty). CDs will not be automatically renewed at maturity.

DWR and the other Agents presently intend, but are not obligated, to maintain a secondary market in CDs, with a minimum trading unit of one CD of \$1,000 in principal amount. The prospect of a secondary market in CDs makes the Program particularly advantageous to Purchasers, since similar CDs acquired directly from the Issuer would not ordinarily be transferable (although early withdrawals, generally with a substantial penalty, may be permitted).

Purchasers receive a "generic" form of Information Statement, in substantially the form of Exhibit C to each Agreement. As you will note, while the Information Statement does not provide specific information regarding the particular Issuer or the CDs offered, it advises the Purchaser how such information may be obtained from the Agent (see "Information on Institutions" and "Terms of CDs" on pages 1-2 of the Information Statement), and provides substantial general information about the CDs, including a detailed description of deposit insurance coverage. Purchasers also receive a confirmation of purchase, in the Agent's customary form, describing the CDs purchased and the Issuer.

Description of Issuers

Pursuant to Utah Code Ann. § 7-8-3, as amended by 1994 Utah SB 171, § 60,² Utah industrial loan corporations such as the Issuers are organized under the Utah Revised Business Corporation Act, but are subject to applicable provisions of the Utah Financial Institutions Act (the "UFIA"). No person may engage in business as an industrial loan corporation without prior authorization by the Utah Department of Financial Institutions (the "Department"). Utah Code Ann. §§ 7-1-701 - 7-1-715 (1988 & 1993 Supp., as amended by 1994 Utah SB 171, §§ 19-25). Utah Code Ann. § 7-8-5(2), as amended by 1994 Utah SB 171, § 61, provides that "[e]ach industrial loan corporation accepting or holding deposits shall maintain the minimum amount of capital required by its federal deposit insurer." In addition, Utah Code Ann. § 7-8-5(3), as amended by 1994 Utah SB 171, § 61, provides that "[a]n industrial loan corporation may accept or hold deposits only if

² 1994 Utah SB 171, incorporating numerous revisions of the Utah Financial Institutions Act, Utah Code Ann. §§ 7-1-101 et seq., was approved by the Governor on March 17, 1994 and took effect on June 1, 1994.

July 14, 1994

its accounts are insured by a federal deposit insurance agency."³ Accordingly, the Issuers are all FDIC-insured institutions.

Industrial loan corporations issuing certificates of deposit are deemed "depository institutions" (along with banks, savings and loan associations and savings banks) and "financial institutions" for purposes of the UFIA. Utah Code Ann. § 7-1-103(8) and (10), as amended by 1994 Utah SB 171, § 3. As in the case of Utah banks, savings and loan associations and savings banks, Utah industrial loan corporations are subject to extensive regulation by the Utah Commissioner of Financial Institutions (the "Commissioner"), as regards their conduct, operations and management, including capital and liquidity requirements, and limits on investments and loans. Utah Code Ann. §§ 7-1-301 - 7-1-322 (1988 and 1993 Supp.) and § 7-1-501(5), as amended by 1994 Utah SB 171, § 15. In the event that an industrial loan corporation is not in a safe or sound condition, has violated the UFIA, rules or regulations thereunder, or has engaged in certain other specified actions, the Commissioner may order a change in control of the institution, or may take possession of the institution himself (and may appoint a receiver or liquidator). Utah Code Ann. § 7-2-1, as amended by 1994 Utah SB 171, § 30.

As regards conditions specifically applicable to industrial loan corporations, the UFIA prohibits an increase in capital stock without the Commissioner's prior approval; requires the filing of financial reports at least twice annually; restricts dividend payments; restricts institutions' ability to purchase, hold and convey real estate; limits the amount an institution may invest in premises, equipment, and other property used in conducting its own business (including securities issued by a subsidiary or affiliate); requires the charge-off of certain bad debts; requires the registration of industrial loan corporation holding companies with the Department; requires an institution's board of directors to meet at least quarterly; and imposes limits on loans to one borrower. Utah Code Ann. §§ 7-8-2 - 7-8-20 (1988 & 1993 Supp.), as amended by 1994 Utah SB 171, §§ 60-69).

Accordingly, while the Issuers are not technically "banks" for purposes of the UFIA, they are subject to similar types of regulation in their status as "depository institutions" and "financial institutions." Further, regardless of their status under the UFIA, for purposes of key federal banking laws,

³ After June 30, 1989, Utah industrial loan corporations were prohibited from accepting or holding deposits unless their accounts were insured by a federal deposit insurance agency. See former Utah Code Ann. § 7-8-5(8) (1988).

July 14, 1994

they are treated like banks. Thus, "industrial banks" and similar depository institutions are deemed "state banks" within the meaning of FDIA § 3(a)(2), 12 U.S.C. § 1813(a)(2), therefore qualifying them for deposit insurance coverage as "banks" and "insured depository institutions" under FDIA §§ 3(a)(1)(A) and 3(c)(2), 12 U.S.C. §§ 1813(a)(1)(A) and 1813(c)(2), and subjecting them to extensive regulation as such by the FDIC. Further, the Issuers, as FDIC-insured institutions, are also subject to certain rules promulgated by the Board of Governors of the Federal Reserve System (see, e.g., Regulation D, 12 C.F.R. Part 204, governing reserve requirements, and Regulation DD, 12 C.F.R. Part 230, the "Truth In Savings" rules).

Request for No-Action Letter

1. Availability of "Bank Securities" Exemption

In light of the manner in which the Issuers are organized and supervised, and the activities they conduct, we believe, and respectfully request that you issue a no-action letter confirming, that the CDs qualify as exempt securities under Section 44-1843(A)(2) of the Act, as securities "issued by a state bank the business of which is supervised and regulated by an agency of . . . the United States."

In this connection, it is noted that the staff of the Securities and Exchange Commission (the "SEC") has recognized that FDIC-insured "investment certificates" (tantamount to the CDs) issued by Utah industrial loan corporations qualify for exemption under Section 3(a)(2) of the Securities Act of 1933, as amended, as securities "issued . . . by a bank." Enclosed find a copy of Peoples 1st Thrift (SEC No-Action Letter, May 7, 1990), which includes pertinent background information regarding these institutions.⁴

Also enclosed find a copy of a no-action letter (with our inquiry letters attached) which we recently obtained from your office, in which you confirmed that FDIC-insured "investment certificates" issued by California industrial loan companies, which were being offered and sold in a similar program by DWR,

⁴ It should be noted that while the court in Bradford v. Moench, 809 F. Supp. 1473 (D. Utah 1992), concluded that thrift certificates and passbook accounts issued by a defunct Utah industrial loan corporation did not qualify as "bank securities" under the Section 3(a)(2) exemption, the distinguishing factor in that case, as recognized in the court's analysis of earlier SEC no-action letters, was the absence of federal deposit insurance coverage for the accounts in question.

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qualified as "exempt securities" under Section 44-1843(A)(2). Considering that California industrial loan companies are substantially similar to the Issuers, we believe such letter is relevant precedent for our position in this regard.

2. Availability of "Government Securities" Exemption

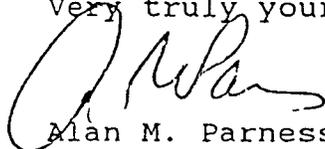
Since the CDs will be FDIC-insured up to \$100,000, and since DWR and the Agents have undertaken not to sell more than 90 CDs (\$90,000 principal amount in the case of interest-bearing CDs) to any one customer, we also believe, and respectfully request that you issue a no-action letter confirming, that the CDs qualify as exempt securities under Section 44-1843(A)(1) of the Act, as securities "guaranteed by the United States . . . or by any agency [thereof]." In this connection, we also refer you to: (a) Section 901(b) of the Competitive Equality Banking Act of 1987, Public L. No. 100-86, 101 Stat. 657 (1987), in which Congress confirmed that "deposits up to the statutorily prescribed amount in federally insured depository institutions are backed by the full faith and credit of the United States"; and (b) FDIA § 18(a), 12 U.S.C. § 1828(a), requiring insured institutions to display a logo that "insured deposits are backed by the full faith and credit of the United States Government." We believe such statutory provisions confirm that the FDIC's insurance coverage is tantamount to a "guarantee" within the meaning of the foregoing exemptive provision.

Enclosed please find a check for \$200 in payment of the filing fee required by Section 44-1861(L) of the Act.

We would appreciate a prompt review of, and response to, this request. Should you have any questions or require any additional information with regard to this matter, please call the undersigned at 212-504-6342 or, in my absence, Patricia L. McKeogh of this firm, at 212-504-6516. Thank you for your consideration in this regard.

Please stamp the enclosed copy of this letter to acknowledge receipt of this filing and return same in the self-addressed stamped envelope provided for that purpose.

Very truly yours,



Alan M. Parness

Enclosures