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ARIZONA CORPORATION COMMISSION

JAMES MATTHEWS
EXECUTIVE SECRETARY

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470

September 26, 1996

Alison M. Fuller, Esq.
Seward & Kissel
1200 G Street, N.W.
Washington, D.C. 20005

RE: Oppenheimer Capital
File No. S-0051762-NOAC
A.R.S. § 44-1843(A)(2)

Dear Ms. Fuller:

On the basis of the facts set forth in your letter of August 22, 1996, and the supplemental letter from Paul T. Clark to Cheryl Farson dated August 23, 1996, and in reliance upon your opinion as counsel, the Securities Division concurs with your opinion that state-licensed United States branches of foreign banks that receive substantially equivalent supervision and regulation as state-chartered domestic banks should be treated as "state banks" for purposes of A.R.S. § 44-1843(A)(2).

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.

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 that reads "Victor Rodarte".

VICTOR RODARTE
Chief Deputy Director of Securities

VR:ptj
Attachments

SEWARD & KISSEL

1200 G STREET, N.W.
WASHINGTON, D.C. 20005

TELEPHONE: (202) 737-8633
FACSIMILE: (202) 737-5164

GEORGE C. SEWARD
SENIOR COUNSEL

LESTER KISSEL
CHARLES W. VALENTINE
EDWARD W. BELZ-FRY
ROBERT B. SIMON
KEITH H. ELLIS
ALBERTO L. CALAFELL
RICHARD H. METSCH
FRANCIS S. RATH

COUNSEL

CNE BATTERY PARK PLAZA
NEW YORK, N.Y. 10004
TELEPHONE: (212) 574-1200
FACSIMILE: (212) 463-6421

REPRESENTATIVE OFFICE
ANDRASSY UT 64
1062 BUDAPEST, HUNGARY
TELEPHONE: (361) 3-2-7654
FACSIMILE: (361) 3-2-7682

LEONARD S. BLOCH
ERNEST G. BASTIEN
ALBERT A. WALSH
ARRIAL S. COGAN
BRUCE D. SENZEL
MARLENE D. DANIELLE
JAMES H. MARCOCO
ANTHONY R. MANFIELD
ANTHONY C. J. NULAND
ALFRED HUDGE
M. WILLIAM MUNNO
PETER C. PRONT
DALE C. CHRISTENSEN, JR.
DAVID L. FOBES
HADLEY S. ROE
RUSSELL C. PRINCE
CRAIG T. HICKERNELL
ROBERT A. WALDER
JOHN E. TAVSS
WILLIAM F. KUNTZ, II
GARY J. WOLFE
LAWRENCE RUTHOWSKI
RONALD L. COHEN
MARK J. MYLAND
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JONATHAN BERGER
THOMAS G. MACDONALD
MARK A. BRODY
PAUL M. GOTTLIEB
JOHN J. CLEARY
MICHAEL J. MCNAMARA
KALYAN DAS
JOHN F. HIGNEY
PATRICIA A. POGGINCO
GREG B. CIOFFI

August 22, 1996

*ADMITTED IN DISTRICT OF COLUMBIA

Leslie R. Block, Esq.
Assistant General Counsel
Arizona Corporation Commission
Securities Division
1300 West Washington Street
Third Floor
Phoenix, Arizona 85007

AUG 26

Dear Ms. Block:

On behalf of Oppenheimer Capital ("Oppenheimer"), we respectfully request that you confirm in writing that your office would treat federally insured certificates of deposit ("CDs") issued by certain U.S. branches of foreign banks (the "U.S. Branches") as exempt from registration under Section 44-1841 of the Arizona Revised Statutes. The U.S. Branches are supervised and regulated by the Federal Deposit Insurance Corporation (the "FDIC") and are licensed either by the State of Illinois or the State of New York. The activities of the U.S. Branches, including the issuance of securities, are regulated and supervised by the States of Illinois and New York in the same manner as the

1. Although certificates of deposit are not securities for purposes of the federal securities laws (Marine Bank v. Weaver, 455 U.S. 551 (1982)), certificate of deposit programs conducted by registered broker-dealers generally are designed to comport with exemptions from state securities registration requirements available for obligations of depository institutions. Please note that submission of this request should not be construed as an admission that the CDs are securities as defined in Section 2(1) of the Securities Act of 1933 and Section 44-1801(22) of the Arizona Revised Statutes.

activities of state-licensed domestic banks are regulated and supervised by those states. Oppenheimer proposes to offer the CDs through broker-dealers registered under Section 15(a) of the Securities Exchange Act of 1934 and the laws of Arizona to residents of Arizona in amounts not exceeding \$100,000, including principal and interest, from any single U.S. Branch.

Section 44-1843(A)(2) of the Arizona Revised Statutes provides an exemption from registration for securities issued or guaranteed by a "state bank ... the business of which is supervised and regulated by an agency ... of the United States." Treating a state-licensed U.S. branch of a foreign bank as a "state bank ... the business of which is supervised and regulated by an agency ... of the United States" is consistent with the principle of "national treatment" and the treatment given such institutions by the Securities and Exchange Commission (the "SEC") and by State bank regulators, including the bank regulators of the States of Illinois and New York, as more fully explained below.

The Principle of National Treatment

The International Banking Act of 1978 (the "IBA"), the legal framework which governs the U.S. operations of foreign banks, incorporates, as one of its two principal policy objectives, the objective of providing "to the extent possible or appropriate equal treatment for foreign and domestic banks operating in the United States." H.R. Rep. No. 910, 95th Cong. 2d Sess. 5 (1978). In its extensive review of the legislative history of the IBA, the United States Court of Appeals for the District of Columbia Circuit found such history "replete with references to Congress' intent to accord foreign banks national treatment, under which 'foreign enterprises ... are treated as competitive equals with their domestic counterparts.'" (citation omitted). Conference of State Bank Supervisors, et. al. v. Conover, 715 F.2d 604, 615 (D.C. Cir. 1983). The court found that "establishment of a foreign bank's initial home state office is analogous to establishment of a domestic bank's principal office." Id. at 616-617. Treatment of a state-licensed U.S. branch of a foreign bank as a bank organized and supervised under the laws of such state would be consistent with the principle of national treatment.

The Securities and Exchange Commission

The SEC has given effect to the principle of national treatment in its implementation of Section 3(a)(2) of the Securities Act of 1933. 15 U.S.C. §77c(a)(2). That provision exempts from registration "any security issued or guaranteed by any bank." The term "bank" includes "any banking institution organized under the laws of any State ... the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official." *Id.* For purposes of the Section 3(a)(2) exemption, the SEC "deems a branch or agency of a foreign bank located in the United States to be a [bank], provided that the nature and extent of federal and/or state regulation and supervision of the particular branch or agency is substantially equivalent to that applicable to federal or state chartered domestic banks doing business in the same jurisdiction." Release No. 33-6661 (September 23, 1986). In adopting this interpretation, the SEC formalized its no-action positions, which it characterized as "intended to implement the 'principle of national treatment,' that foreign and domestic banks should have the same privileges and be subject to the same rules in this country." *Id.*

Regulation by Agency of the United States

The deposits of the U.S. Branches are insured by the FDIC, an agency of the United States created pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1811, et seq.). The U.S. Branches are, therefore, subject to extensive supervision and regulation by an "agency of the United States." Your office has on a prior occasion, with respect to FDIC-insured CDs issued by industrial loan companies, agreed that the FDIC is an agency of the United States. (No-Action Letter, DEE RIDDELL HARRIS, March 30, 1994, BLUE SKY L.REP. (CCH) Para. 9687.)

State Bank Regulators

To assist in making a determination that the regulation and supervision of such institutions is "substantially equivalent" to that of its domestic counterparts, we have enclosed copies of letters issued by the Illinois Commissioner of Banks and Trust Companies and the State of New York Banking Department to that effect.

Leslie R. Block, Esq.

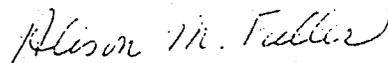
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August 22, 1996

Based on the above, we ask that you confirm that your office would treat FDIC-insured CDs issued by U.S. branches of foreign banks, licensed either by the State of Illinois or by the State of New York, as exempt from registration pursuant to Section 44-1843(A)(2) of the Arizona Revised Statutes. Enclosed please find our check in the sum of \$200.00.

Please telephone me if you have any questions.

Very truly yours,



Alison M. Fuller

AMFuller:trg
Enclosure
66979190.AF1

SEWARD & KISSEL

1200 G STREET, N.W.
WASHINGTON, D.C. 20005

TELEPHONE: (202) 737-8833
FACSIMILE: (202) 737-8184

GEORGE C. SEWARD*
SENIOR COUNSEL

LESTER KISSEL
RICHARD H. VALENTINE
EDWARD W. BEUCHERT
ROBERT S. SIMON
KEITH M. ELLIS*
ALBERTO L. CALAFELL
RICHARD H. METSCH
FRANCIS B. RATH*
COUNSEL

ONE BATTERY PARK PLAZA
NEW YORK, N.Y. 10004
TELEPHONE: (212) 274-1200
FACSIMILE: (212) 460-8421

REPRESENTATIVE OFFICE
ANDRÁSZ UT 64.
1082 BUDAPEST, HUNGARY
TELEPHONE: (361) 312-7864
FACSIMILE: (361) 312-7862

EUGENE P. BOUTER
BLAISE G. A. FABBIO
ALBERT A. WALSH*
ARRIAL B. COGAN
BRUCE D. SENIEL
MARLENE D. DANIELL
JAMES R. HANCOCK*
ANTHONY R. HANFIELD*
ANTHONY C. J. MULARD*
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WILLIAM F. KUNTZ, II
GARY J. WOLFE
LAWRENCE RUTKOWSKI
RONALD L. COHEN
MARR J. HILAND
PAUL T. CLARK*
JONATHAN REMOER
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MARK A. BRODY
PAUL W. DOTTLINE
JOHN J. CLEARY
MICHAEL J. MCNAMARA
KALYAN DAS
JOHN F. NICHET
PATRICIA A. MOGLINCO
GREG B. CIOFFI

August 23, 1996

*ADMITTED IN DISTRICT OF COLUMBIA

Cheryl Farson, Esquire
Arizona Corporation Commission
Securities Division
1300 West Washington Street
Third Floor
Phoenix, Arizona 85007

Dear Ms. Farson:

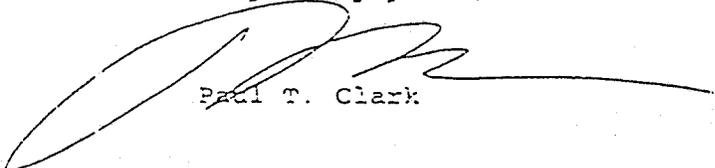
This will confirm, pursuant to our conversation yesterday, that my August 12, 1996 letter requesting interpretive advice on behalf of Smith Barney, Inc. ("Smith Barney") is limited to the narrow issue of the treatment of the U.S. Branches, as defined in the letter, for purposes of the exemption contained in Section 44-1843(A)(2) of the Arizona Revised Statutes and does not include any issues associated with Smith Barney's certificate of deposit program.

Additionally, as discussed, each of the U.S. Branches is insured and regulated by the Federal Deposit Insurance Corporation ("FDIC"). The FDIC, in conjunction with the Federal Reserve Board, regulates these branches to the same extent as domestically chartered banks.

You should be advised that a similar letter has been sent to the Securities Division by Alison M. Fuller of this firm on behalf of Oppenheimer Capital and is limited to the same issue as the Smith Barney letter. The statement in the foregoing paragraph applies as well.

Please call me if you have any questions.

Very truly yours,


Paul T. Clark

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