

RENZ D. JENNINGS
CHAIRMAN

MARCIA WEEKS
COMMISSIONER

CARL J. KUNASEK
COMMISSIONER



JAMES MATTHEWS
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
1300 West Washington
Third Floor
TELEPHONE: (602) 542-4242
FAX: (602) 542-3583

April 25, 1995

David R. King, Esq.
Kruse, Landa & Maycock, L.L.C.
Eighth Floor, Bank One Tower
50 West Broadway (300 South)
Salt Lake City, Utah 84101-2034

RE: Sun Capital Bank/Sun Capital Bancorp.
A.R.S. § 44-1844(A)(6)

Dear Mr. King:

On the basis of the facts set forth in your letter of April 17, 1995, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona (the "Act") should the transaction take place as set forth in your letter.

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 black ink, appearing to read "Dee Ridgell Harris".

DEE RIDDELL HARRIS
Director of Securities

DRH:lb
Attachment

KRUSE, LANDA & MAYCOCK, L.L.C.

EIGHTH FLOOR, BANK ONE TOWER
50 WEST BROADWAY (300 SOUTH)
SALT LAKE CITY, UTAH 84101-2034

DAVID R. KING

TELEPHONE: (801) 531-7090
TELECOPY: (801) 359-3554
(801) 531-9892
VOICE MAIL (801) 567-2141

April 17, 1995

4-18-95
\$200
S-0044366-NOAC
Rec # 130822
UP
VIA FEDERAL EXPRESS

State of Arizona
Corporation Commission, Securities Division
D. R. Harris, Director
1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007

Re: Sun Capital Bank Share Exchange No Action Request

Dear Mr. Harris:

On behalf of Sun Capital Bank (the "Bank") and Sun Capital Bancorp ("Bancorp") we are filing a no action request pursuant to section 44-1861(L) of the Arizona Revised Statutes, as amended (the "Act"). The Bank and Bancorp have entered into a Plan of Exchange (the "Exchange") that contemplates the Exchange by the Bank shareholders of all of their shares in the Bank for shares of Bancorp, thereby making the Bank a wholly owned subsidiary of Bancorp and resulting in shareholders of the Bank becoming shareholders of Bancorp. There are currently issued and outstanding 421,721 shares of common stock, par value \$1.00, which will be exchanged by the shareholders of the Bank for an equal number of shares of common stock of Bancorp, par value \$1.00. The Bank is a Utah chartered commercial bank organized in 1974. Seven of the Bank's shareholders reside in Arizona.

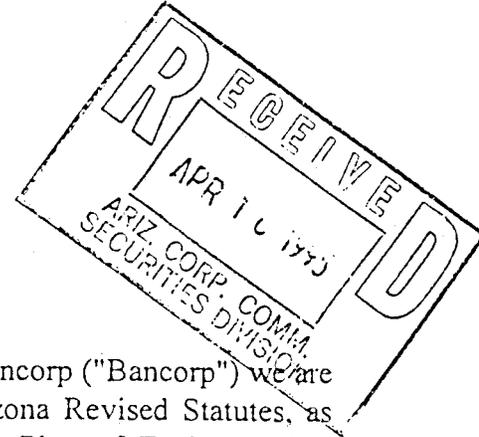
The purpose of this letter is to request that the Division of Securities confirm that, with respect to the facts and circumstances discussed herein:

a. The proposed exchange of common stock of the Bank for common stock of Bancorp is exempt from registration in the state of Arizona pursuant to section 44-1844(6) of the Act. We request that this exemption apply to the exchange of common stock by shareholders of the Bank who reside in Arizona.

b. Bancorp will not be subject to broker-dealer registration pursuant to section 44-1842 due to the sale of stock being an exempt transaction pursuant to section 44-1844(6) of the Act.

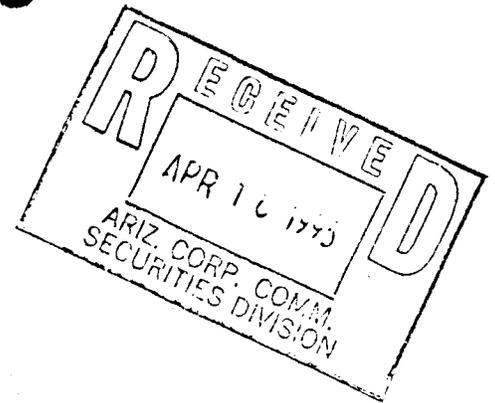
c. For purposes of the Exchange, officers and directors of Bancorp will not be subject to registration as salesmen pursuant to section 44-1842 due to the sale of stock being an exempt transaction pursuant to section 44-1844(6) of the Act.

d. No filings are required to be made in connection with the Exchange.



KRUSE, LANDA & MAYCOCK, L.L.C.

State of Arizona
Corporation Commission, Securities Division
D. R. Harris, Director
April 17, 1995
Page 2



The Bank and Bancorp have entered into a Plan of Exchange, a copy of which is included in the proxy statement to be sent to shareholders in connection with the meeting of shareholders of the Bank at which the proposed Exchange will be submitted for approval. Pursuant to the terms of the Exchange, upon the approval of the Exchange by the holders of a majority of the shares of the common stock issued and outstanding, each share of issued and outstanding common stock will be exchanged for a newly issued share of Bancorp (the "Bancorp Stock"), subject to the exercise of the Bank shareholders' dissenters' rights. If no shareholders of the Bank exercise their dissenters' rights following the Exchange, Bancorp will have the same number of shares of stock as the Bank currently has issued and outstanding, and each shareholder will own the same number of shares and the same percentage in Bancorp as said shareholder presently owns in the Bank. The directors of the Bank as of the date of the Exchange will become directors of Bancorp. Shareholder approval of the Plan of Exchange will be sought pursuant to the enclosed Bank Proxy Statement which will be accompanied by the enclosed financial statements for the Bank.

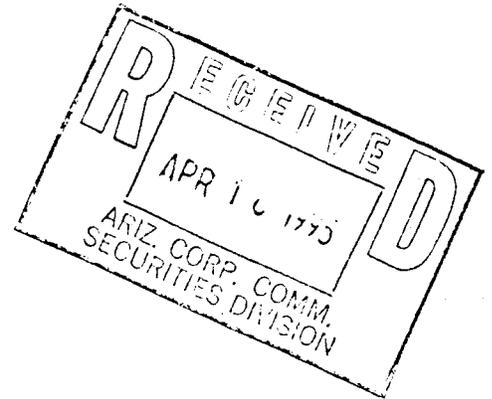
The completion of the Exchange is subject to the satisfaction of certain additional conditions. If approval of the Exchange is obtained from holders of at least a majority of the issued and outstanding shares of the Bank, final approval of the transaction must be obtained from the Utah Department of Financial Institutions. Also, the approval of Bancorp's acquisition of the Bank pursuant to the Bank Holding Company Act of 1956, as amended, must be obtained from the Federal Reserve Board. In addition, notwithstanding the fact that all conditions precedent to the Exchange are fulfilled, in the event that holders of more than 20% of the issued and outstanding shares of the Bank exercise their dissenter's rights, the Exchange will be abandoned. Finally, the Board of Directors of the Bank reserves the right to abandon the Exchange if any shareholders exercise their dissenter's rights.

The Securities Act of 1933, as amended (the "Securities Act"), was recently amended to make the securities issued in connection with the acquisition by a bank holding company (such as Bancorp) of a bank (such as the Bank) exempt from the registration and prospectus delivery requirements of the Securities Act. However, since Bancorp, as a bank holding company, would not itself be a bank or an institution whose deposits were guaranteed by the Federal Deposit Insurance Corporation, its securities are not covered by the exemption from registration for such securities available under most state statutes.

The Exchange is being effected pursuant to section 16-10a-1102 of the Utah Revised Business Corporation Act. This statutory provision sets forth requirements for a share exchange which are the same in most respects to the requirements for a statutory merger under section 16-

KRUSE, LANDA & MAYCOCK, L.L.C.

State of Arizona
Corporation Commission, Securities Division
D. R. Harris, Director
April 17, 1995
Page 3



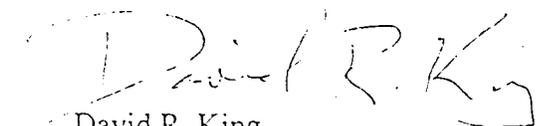
10a-1101 of the Utah Revised Business Corporation Act. Of principal importance is the fact that the Board of Directors of each corporation involved in the share exchange are required to adopt a plan of share exchange, which plan of share exchange is then submitted to the shareholders of each of the corporations for approval. Also, in connection with such shareholder approval, the shareholders of each corporation have dissenters' rights as set forth in section 16-10a-1301, *et seq.* of the Utah Revised Business Corporation Act.

We believe that the exemption pursuant to section 44-1844(6) is applicable to these facts. The exchange of shares of common stock held by shareholders of the Bank for shares of the common stock of Bancorp is pursuant to a statutory share exchange that has the principal features of a statutory merger, a transaction that is specifically covered by section 44-1844(6) of the Act. The Board of Directors of both the Bank and Bancorp are required by statute to approve the Plan of Share Exchange. The Plan of Share Exchange is also required to be submitted to the shareholders of the Bank for approval. The enclosed Proxy Statement and Bank financial statements will be forwarded to the shareholders of the Bank in connection with obtaining shareholder approval. Finally, in the event that any shareholder is dissatisfied with the proposed Exchange, said shareholder may exercise his or her dissenter's rights. Accordingly, although "share exchange" is not a term specifically included in the section 44-1844(6) exemption, nonetheless the "share exchange" transaction contemplated by the Bank and Bancorp pursuant to section 16-10a-1102 of the Utah Revised Business Corporation Act is no different in substance than the transactions specifically covered in the exemption. We therefore believe that the issuance of common stock of the Bank pursuant to the Exchange should be exempt from registration under section 44-1844(6) of the Act.

Enclosed in connection with this no-action request is a check in the amount of \$200 for payment of the required fee.

Very truly yours,

KRUSE, LANDA & MAYCOCK, L.L.C.


David R. King

DRK/bh

Enc.

cc: Sun Capital Bank