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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

July 1, 1996

Sara Ziskin, Esq.
O'Connor Cavanagh
One East Camelback Road, Suite 1100
Phoenix, Arizona 85012

RE: A.G. Edwards Trust Company
A.R.S. § 44-1844(A)(14)

Dear Ms. Ziskin:

On the basis of the facts set forth in your letter of June 12, 1996, 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.

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 that reads "Victor Rodarte".

Victor Rodarte
Deputy Director of Securities

VR:lb
Attachment

O'CONNOR CAVANAGH

The Law Offices of
O'Connor, Cavanagh, Anderson, Killingsworth & Beshears
A Professional Association

Sara R. Ziskin
602-263-2610

June 12, 1996

Delivered by Hand

Leslie Block, Esq.
Arizona Corporation Commission
Securities Division
1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007

Dear Leslie:

This letter constitutes a request for confirmation that the Securities Division will not recommend enforcement action for violation of the Arizona Securities Act (the "Act") for the sale of and investment in interests (the "Interests") in a collective trust (the "Trust") established by and for which A.G. Edwards Trust Company (the "Trust Company") is trustee.

Background

The Trust has been established by the Trust Company which is a Missouri chartered trust company. The Trust Company is an affiliate of A.G. Edwards & Sons, Inc. ("AGE"), a broker-dealer registered in all 50 states, through common ownership by a holding company. In addition, such holding company owns trust companies chartered in certain other states. AGE is one of the largest broker-dealers in the nation in terms of numbers of locations and investment brokers and has more than \$1 billion of equity capital. The Trust Company and its investment advisory subsidiary provide trust services and portfolio management and investment advisory services to accounts totaling more than \$4.2 billion.

The Trust Company is chartered under the banking laws of Missouri and is subject to regulation and supervision by the Division of Finance of Missouri. Trust companies in Missouri generally are subject to the same type of regulatory oversight as banks chartered in Missouri. Such regulation and supervision includes annual physical examinations by the Division of Finance as well as regular periodic (quarterly) reports of condition filed with the Division of Finance. The Division of Finance advises that it generally follows the Regulations (12 CFR 9.18) of the Office of the Comptroller of the Currency (the "OCC") with respect to collective trust funds.

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The Trust

The Trust has been established by the Trust Company as a collective trust to accept monies from (i) pension, profit sharing or other employee benefit plans which are qualified under Section 401(a) of the Internal Revenue Code (the "Code"), which are exempt from tax under Section 501(a) of the Code, and for which the Trust Company is acting as Trustee or Co-Trustee, or as agent, custodian or depository for the trustee or trustees thereof, (ii) certain governmental and state employee plans as defined in the Code, or (iii) any other collective investment trust established under regulations of the OCC or similar state law, or any insurance company separate account, where the assets consist exclusively of funds of employee benefit plans qualified under Section 401(a) of the Code or such governmental or state employee plans (the "Plans").

The Trust consists of several investment options (the "Funds"), ranging from a money market Fund to an international Fund. Each of the Funds is advised by an investment adviser independent of the Trust Company, subject, however, to ultimate investment management of the Funds by the Trust Company. In the future the Trust Company may perform investment management services for some or all of the Funds without engaging independent investment advisers.

Arizona Plans

It is intended that the Trust Company would offer a full range of employee benefit services to Plans, including acting as trustee or co-trustee or investment manager, providing Plan documentation and administration and investments, including the availability of the Funds for investment of Plan assets. When the Trust Company is selected as a trustee, co-trustee or as investment manager of a Plan, it is expected that Plan assets would be invested in the Funds.

The Trust Company anticipates that a number of the Plans will permit employee participants to direct the investment of their Plan assets by choosing from a limited number of investment options selected by the Plan sponsors. Plans that permit Plan participants to make selections among the Funds will likely request that informational meetings be held to answer questions concerning the Funds and assist participants in completing and executing necessary paperwork. The informational meetings are not intended to promote any particular Fund.

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Federal and State Securities Laws

The Interests are exempt from registration under the Securities Act of 1933 (Section 3(a)(2) thereof), the Securities Exchange Act of 1934 (Section 3(12)(A)(iv) thereof) and the Investment Company Act of 1940 (Section 3(c)(11) thereof). In addition, most states provide an exemption from state registration requirements for pension or profit sharing plans or trusts. In some states, exemptions from registration are available for employee benefit plans if investment decisions are made by a fiduciary, as defined in the Employee Retirement Income Security Act of 1974 ("ERISA") that is either a broker-dealer, an investment dealer, an investment adviser, a depository institution or an insurance company. Other states have available exemptions in various other forms applicable to Plans.

Arizona Exemption

Section 44-1844.14 of the Act provides an exemption from registration for the following:

"The sale or issuance of any investment contract or other security in connection with an employee's pension, profit sharing, stock purchase, stock bonus, savings, thrift, stock option or other similar employee benefit plan which meets the requirements for qualification under the United States Internal Revenue Code."

As set forth above, the Plans will meet the requirements for qualification under the Code, and the Interests will be issued in connection with the Plans. We note that the Securities Division previously has granted no action relief in connection with offers and sales of participation interests in a collective trust for Plans, apparently in circumstances where the collective trust or its affiliates would not serve as trustee of the Plans. See Invesco Retirement Trust and Invesco Trust Company (December 21, 1990). We believe such relief also should be granted with respect to the Interests.

Plan participants are afforded significant protections under ERISA in that the Plans must be trustee and otherwise administered in accordance with the strict mandates imposed by ERISA. The Trust Company, in its fiduciary capacity as trustee or as investment manager, will be subject to these requirements, including the duty to be prudent in its investment activities.

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The sponsors of the Plans have the duty to be prudent in the selection and continued appointment of a trustee or investment manager, including the monitoring of the trustee's or investment manager's investment activities, regardless of who the trustee or investment manager is and regardless of the self-directed features of a Plan may have, and sponsors retain the ability to change trustees or investment managers. The fiduciary duties that exist in these arrangements provide sufficient protection to Plan participants so that they do not need the additional protection of the registration requirements under the Act. The costs and cumbersome aspects of registration simply outweigh any additional benefits obtained from registration, and we believe this is recognized under Federal and almost all state securities laws.

Request

Based on the foregoing, we are seeking the grant of this no-action request regarding the sale of the interests. I have enclosed a check in the amount of \$200 to the Arizona Corporation Commission in payment of the fees set forth in ARS §44-1861(L).

If you have any questions or require any additional information, please feel free to call me. Thank you for your consideration in this matter.

Very truly yours,



Sara R. Ziskin
For the Firm

SRZ/ymg