

RENZ D. JENNINGS
CHAIRMAN

MARCIA WEEKS
COMMISSIONER

CARL J. KUNASEK
COMMISSIONER



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 16, 1996

Charles S. Gittleman, Esq.
Shearman & Sterling
599 Lexington Avenue
New York NY 10022-6069

RE: Bank Julius Baer
A.R.S. § 44-1801(9) and § 44-3101(2)(a)

Dear Mr. Gittleman:

On the basis of the facts set forth in your letters of August 5 and 29, 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 or the Arizona Investment Management Act.

As this position is premised upon the facts set forth in your letters, 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 and licensing requirements of the Acts; the anti-fraud provisions of the Acts continue to be applicable.

We have attached a photocopy of your letters. 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 Ridell Harris".

DEE RIDDELL HARRIS
Director of Securities

DRH:GAC
Attachment

SHEARMAN & STERLING

FAX: 212-848-7179
212-848-7181
TELEX: 667290 WUI

599 LEXINGTON AVENUE
NEW YORK, N.Y. 10022-6069
212 848-4000

ABU DHABI
BEIJING
BUDAPEST
DÜSSELDORF
FRANKFURT
HONG KONG
LONDON
LOS ANGELES
NEW YORK
PARIS
SAN FRANCISCO
SINGAPORE
TOKYO
TORONTO
WASHINGTON, D.C.

WRITER'S DIRECT NUMBER:

(212) 848-7317

August 5, 1996

Mr. Dee R. Harris, Director
Arizona Corporation Commission
Securities Division
1300 West Washington Street
Third Floor
Phoenix, Arizona 85007

Dear Mr. Harris:

On behalf of Bank Julius Baer, New York Branch ("BJB"), a U.S. branch of a foreign bank, we are writing to request your confirmation of our conclusion that under the facts set forth below, BJB qualifies as a "bank" for purposes of the broker-dealer, as defined in §44-1801(9)(a) of the Securities Act of Arizona, and investment adviser registration exemptions for banks contained in the securities laws of your state. In arriving at our conclusion, we considered a number of factors, including relevant definitional provisions under the U.S. federal securities laws, applicable policy concerns, and the regulatory regime to which the BJB is subject.

As an initial matter, we have looked to the Securities Exchange Act of 1934, as amended, and the Investment Advisers Act of 1940, as amended. Both statutes define the term "bank" to include "a banking institution ... doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those of national banks and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading [the statutory provisions]". "Banks" are excepted from the definitions of "broker", "dealer" and "investment adviser" under these statutes and, therefore, not subject to their registration requirements. The Securities and Exchange Commission (the "SEC") has expressly interpreted the definition of "bank" to include branches of foreign banks that meet the above criteria. In Release No. 34-27017 (1989), adopting SEC Rule 15a-6 the SEC stated: "to the extent, however, that a foreign bank establishes a branch or agency in the United States that is supervised and examined by a federal or state banking authority and otherwise meets the requirements of section 3(a)(6), the Commission would consider this branch or agency to be a "bank" for purposes of section 3(a)(4) and 3(a)(5) of the Exchange Act." Therefore, we believe it to be consistent and

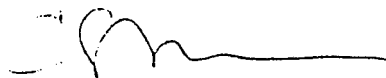
appropriate to apply a similar reading in the absence of specific contrary authority in the context of the securities laws of your state.

The inclusion of entities such as BJB in the above definitions reflects a broader federal policy of "national treatment" of foreign banks conducting operations in the United States. This generally accepted policy is derived from the federal banking laws and requires a foreign bank seeking to establish a U.S. banking operation to demonstrate to the appropriate bank regulatory authority that it meets the same general standards of strength, experience and reputation as are applied to domestic organizers of banks and bank holding companies. This policy provides protection to U.S. persons dealing with branches of foreign banks and requires such entities to meet uniform standards. Thus, in order to establish a U.S. banking operation, entities such as BJB must be deemed to have the same qualifications as their domestic U.S. counterparts.

Beyond meeting such criteria at the outset of establishing a U.S. operation, entities such as BJB are subject to the same ongoing regulation, supervision and examination by federal and state banking authorities as are domestic entities. Such requirements permit U.S. persons dealing with U.S. branches of foreign banks to benefit from all of the same protections regarding licensing and other regulatory requirements afforded to persons dealing with domestic banks. As you know, these protections are extensive and the regulatory scheme with which these entities must comply is rigorous. Coupled with a national policy of "national treatment", this consistent and continuing regulation and supervision argues strongly in favor of according similar status to entities such as BJB, including in the context of the exemption from broker-dealer and investment adviser registration, on the state level.

For all of the reasons stated above, we request your concurrence with our conclusion that BJB, being a U.S. branch of a foreign bank, be considered a "bank" for purposes of the exemption from broker-dealer and investment adviser registration requirements in your state. Please do not hesitate to contact me at the above number if you have any questions or if I can be of further assistance with respect to this matter.

Very truly yours,



Charles S. Gittleman

SHEARMAN & STERLING

FAX: 212-848-7179
212-848-7181
TELEX: 667290 WUI

599 LEXINGTON AVENUE
NEW YORK, N.Y. 10022-6069
212 848-4000

ABU DHABI
BEIJING
BUDAPEST
DÜSSELDORF
FRANKFURT
HONG KONG
LONDON
LOS ANGELES
NEW YORK
PARIS
SAN FRANCISCO
SINGAPORE
TOKYO
TORONTO
WASHINGTON, D.C.

WRITER'S DIRECT NUMBER:
(212) 848-7317

August 29, 1996

VIA MAIL AND TELECOPIER

Mr. Gregory Sygan
Arizona Corporation Commission
Securities Division
1300 West Washington Street
Third Floor
Phoenix, Arizona 85007

Dear Mr. Sygan:

Supplementing our letter dated August 5, 1996 to Mr. Dee R. Harris, with respect to our request for confirmation that Bank Julius Baer, New York Branch ("BJB") qualifies as a "bank" for purposes of broker-dealer and investment adviser registration exemption and pursuant to your telephone message to Guy Shelly from our office, I wish to confirm the following:

1. BJB is not FDIC insured. The reason being that foreign banks are not permitted to be insured and must accept only wholesale deposits i.e. deposits over \$100,000.
2. BJB does accept customers' deposits.
3. BJB is regulated at the federal level by the Office of the Comptroller of Currency, customarily called the OCC.
4. BJB is a "branch" and not an agency.

If you have any other questions or require further assistance please do not hesitate to call myself or Mr. Guy Shelly (212) 848-7655.

Very truly Yours,



Charles S. Gittleman