Statute file

ARIZONA CORPORATION COMMISSION

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

March 30, 1994

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

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

Dear Mr. Parness:

On the basis of the facts set forth in your letters of February 17 and March 10 and 25, 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 letters. The Division concurs with your opinion that the investment certificates 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 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 requirements of the Act; the anti-fraud provisions of the Act 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,

DEE RIDDELL HARRIS
Director of Securities

DRH:lb
Attachment

dwr

Cadwalader, Wickersham & Taft

100 Maiden Lane

New York, N.Y. 10038

Telephone: (212) 504-6000

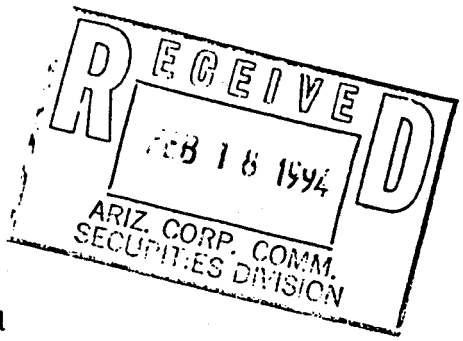
1333 NEW HAMPSHIRE AVE., N.W.
WASHINGTON, D.C. 20036
TEL: (202) 862-2200
FAX: (202) 862-2400

660 SOUTH FIGUEROA STREET
LOS ANGELES, CA 90017
TEL: (213) 955-4600
FAX: (213) 955-4666

CABLE ADDRESS: LABELLUM
TELEX: 129146/667465
FAX: (212) 504-6666

440 ROYAL PALM WAY
PALM BEACH, FLA. 33480
TEL: (407) 655-9500
FAX: (407) 655-9508

February 17, 1994



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

Re: Dean Witter Reynolds Inc.
Investment Certificates Issued by California Industrial Loan Companies
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 investment certificates ("ICs") issued by California-chartered industrial loan companies[1] (each, an "Issuer").

Description of IC Program

After a credit review by DWR, Issuers accepted into the IC Program enter into an Investment Certificate Agency Agreement (an "Agreement"), in substantially the form enclosed herewith,

[1] Pursuant to Cal. Fin. Code §§ 18003 and 18003.1, these companies may also be called "thrift and loan companies" or "investment and loan companies."

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.[2] The following is a general description of the Program.

All of the ICs are insured by the Federal Deposit Insurance Corporation (the "FDIC"); accordingly, each purchaser of an IC (each, a "Purchaser") will have an aggregate of $100,000 of coverage for the principal of, and interest or earned discount on, ICs 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 ICs ($90,000 in the case of interest-bearing ICs), so as to assure FDIC insurance coverage of the principal of, and accrued interest or earned discount on, the specific ICs purchased.

In most cases, no individual certificates evidencing the ICs will be issued; rather, in accordance with FDIC recordkeeping rules codified at 12 C.F.R. § 330.4, a "master" IC, in substantially the form annexed to the Agreement as Exhibit B - Part I (for fixed or adjustable rate ICs) or Exhibit B - Part II (for zero coupon ICs), in an aggregate principal amount of all ICs 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 ICs 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 ICs by the respective Purchasers.

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

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[2] 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 ICs.

Each IC is in the principal amount of $1,000 at stated maturity (certain ICs are sold at a discount on a "zero coupon" basis), and no additions are permitted to ICs. Withdrawals are permitted only in the case of death or adjudication of incompetence (in which case principal and accrued interest or earned discount may be withdrawn in full, without penalty), and in accordance with Cal. Fin. Code § 18315 and a rule promulgated thereunder by the California Department of Corporations (the "CDC"), which regulates the Issuers, pursuant to which ICs will be repurchased by Issuers, subject to certain conditions, including imposition of a penalty (see Section 7(e) of the Agreement). ICs will not be automatically renewed at maturity.

DWR and the other Agents presently intend, but are not obligated, to maintain a secondary market in ICs, with a minimum trading unit of one IC of $1,000 in principal amount. The prospect of a secondary market in ICs makes the Program particularly advantageous to Purchasers, since similar ICs acquired directly from the Issuer would not ordinarily be transferable, and the Purchaser would have to depend on the Issuer's repurchase obligation for "liquidity."

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 ICs offered, it advises the Purchaser how such information may be obtained from the Agent (see "Information on the Institution" and "Terms of ICs" on pages 1-2 of the Information Statement), and provides substantial general information about the ICs, including a detailed description of deposit insurance coverage. Purchasers also receive a confirmation of purchase, substantially in the form of Exhibit D to the Agreement, describing the ICs purchased and the Issuer.

Description of Issuers

While the Issuers are prohibited from advertising or representing that they are "banks" or "savings and loan associations" by Cal. Fin. Code § 18057, such distinction appears to be more an exercise in semantics than substance. First, "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 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). Since July 1, 1990, all preexisting and new California industrial loan companies (including the Issuers) have been required by Cal. Fin. Code § 18521.5 to obtain FDIC insurance as a condition of conducting business.

Second, California industrial loan companies are authorized to lend money, on a secured or unsecured basis (Cal. Fin. Code §§ 18190 *et seq.*), and to sell accounts in the form of investment certificates, which are in essence certificates of deposit (Cal. Fin. Code §§ 18315 *et seq.*), powers which are essentially the same as those exercised by banks and savings and loan associations.

Third, the Issuers are subject to extensive supervision and regulation by the CDC pursuant to Cal. Fin. Code §§ 18000 *et seq.*, as well as by the FDIC, in roughly the same manner as banks and savings and loan associations. For example, the CDC must make a careful investigation and examination of various matters before an application for authority to engage in business is granted to a proposed industrial loan company, the company's capitalization is subject to a number of conditions and restrictions, and branch offices and relocations are subject to CDC approval. Further, industrial loan companies' assets may be seized and liquidated, or they may be placed in conservatorship, for violation of statutory requirements substantially similar to those applicable to banks and savings and loan associations. It should also be noted that 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).

Fourth, the staff of the Securities and Exchange Commission (the "SEC") has recognized that ICs issued by California industrial loan companies qualify for exemption under Section 3(a)(2) of the Securities Act of 1933, as amended (the "1933 Act"), as securities "issued . . . by a bank." Enclosed find a copy of The Morris Plan Company of California (SEC No-Action Letter, May 7, 1990), which includes pertinent background information regarding these institutions.

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, and the SEC's position with regard to the status of ICs as exempt securities under 1933 Act § 3(a)(2), we believe, and respectfully request that you issue a no-action letter confirming, that the ICs 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."

2. Availability of "Government Securities" Exemption

Since the ICs will be FDIC-insured up to $100,000, and since DWR and the Agents have undertaken not to sell more than 90 ICs ($90,000 principal amount in the case of interest-bearing ICs) to any one customer, we also believe, and respectfully request that you issue a no-action letter confirming, that the ICs 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 Unites 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.

Also enclosed find copies of: (i) a February 7, 1994 interpretive opinion by the Washington Securities Administrator with regard to the ICs being offered and sold in the Program, and (ii) a December 3, 1993 opinion letter by the Kansas Securities Commissioner, as reprinted at 2A Blue Sky L. Rep. (CCH) ¶ 26,547, with regard to insured deposits (including "investment certificates") issued by industrial loan companies organized outside Kansas. In both cases, the states confirmed that ICs may qualify as "exempt securities" under the statutory exemption for U.S. government-guaranteed securities, provided that sales do not exceed the $100,000 insurance limit. Considering that the Washington and Kansas exemptions are substantially identical to Section 44-1843(A)(1) of the Act, we believe such opinion letters are relevant precedent for our position in this regard.

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

Cadwalader, Wickersham & Taft

100 Maiden Lane

New York, N.Y. 10038

Telephone: (212) 504-6000

1333 NEW HAMPSHIRE AVE., N.W.
WASHINGTON, D.C. 20036
TEL: (202) 862-2200
FAX: (202) 862-2400

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FAX: (213) 955-4666

CABLE ADDRESS: LABELLUM
TELEX: 129146/667465
FAX: (212) 504-6666

440 ROYAL PALM WAY
PALM BEACH, FLA. 33480
TEL: (407) 655-9500
FAX: (407) 655-9508

March 10, 1994

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

Attn: Leslie Block, Esq.

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

Dear Sir or Madam:

Pursuant to my telephone conversation with Leslie Block of your staff yesterday with regard to the above-captioned matter, enclosed please find, for your information, copies of: (1) my letter of February 17, 1994 to Colorado and the no-action letter issued on March 2 in response thereto; (2) my letter of February 17, 1994 to Georgia and the no-action letter issued on February 24 in response thereto; (3) my letters of October 13, 1993 and February 2 and 14, 1994 to New Jersey and the no-action letter issued on February 28 in response thereto; (4) my letter of February 17, 1994 to North Dakota and the no-action letter issued on February 24 in response thereto; (5) my letter of February 17, 1994 to West Virginia and the interpretative opinion issued on March 1 in response thereto; and (6) my letter of February 17, 1994 to Wyoming and the interpretative opinion issued on February 27 in response thereto.

As you will note, the Georgia, West Virginia, and Wyoming letters are premised on the "government guarantee"

exemption, while the Colorado and New Jersey letters are premised on the "bank securities" exemption; it appears that North Dakota accepted both exemptions.

Should you have any questions or require any additional information, do not hesitate to call the undersigned.

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

Cadwalader, Wickersham & Taft

100 Maiden Lane

New York, N.Y. 10038

Telephone: (212) 504-6000

CABLE ADDRESS: LABELLUM
TELEX: 129448/667466
FAX: (212) 504-6666

1333 NEW HAMPSHIRE AVE., N.W.
WASHINGTON, D.C. 20036
TEL: (202) 862-2200
FAX: (202) 862-2400

350 SOUTH FIGUEROA STREET
LOS ANGELES, CA 90017
TEL: (213) 955-4600
FAX: (213) 955-4566

450 ROYAL PALM WAY
PALM BEACH, FLA. 33480
TEL: (407) 655-9500
FAX: (407) 655-9508

March 25, 1994

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

Attn: Leslie Block, Esq.

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

Dear Sir or Madam:

In furtherance of my letters of February 17 and March 10, 1994 and my telephone conversation this morning with Leslie Block of your staff with regard to the above-captioned matter, this will confirm that the Federal Deposit Insurance Corporation (the "FDIC") was created pursuant to the Federal Deposit Insurance Act, as amended (the "Act"), 12 U.S.C. §§ 1811 et seq., for the purpose of insuring the deposits of all banks and savings associations entitled to the benefits of insurance under the Act, and in such connection, to supervise and regulate insured institutions.

Pursuant to 12 U.S.C. § 1813(z), the term "Federal banking agency" is defined to mean "the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation" [emphasis supplied]. In addition, 12 U.S.C. § 1813(q)(3) defines the term "appropriate Federal banking agency" to mean "the Federal Deposit Insurance

Corporation in the case of a State nonmember insured bank (except a district bank) or a foreign bank having an insured branch." As regards California industrial loan companies, the term "State nonmember bank" is defined in 12 U.S.C. § 1813(e)(2) to mean "any State bank which is not a member of the Federal Reserve System"; in turn, the term "State bank" is defined in 12 U.S.C. § 1813(a)(2) to include any "... industrial bank (or similar depository institution which the Board of Directors [of the FDIC] finds to be operating substantially in the same manner as an industrial bank) ..."

In light of the foregoing, I believe that the FDIC should be deemed an "agency of ... the United States" for purposes of Section 44-1843(A)(2) of the Arizona Securities Act.

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

VIA TELECOPIER/UPS