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ARIZONA CORPORATION COMMISSION

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SECURITIES DIVISION
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November 6, 1996

Nancy M. Stiles, Esq.
Silver, Freedman & Taff, L.L.P.
1100 New York Avenue, N.W.
Washington, D.C. 20005-3934

RE: Imperial Thrift and Loan Association
A.R.S. § 44-1843(A)(2)

Dear Ms. Stiles:

On the basis of the facts set forth in your letter of October 3, 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. The Division concurs with your opinion that the deposit products 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." In addition, as a result of that exemption, neither the salesman registration provisions of A.R.S. §44-1842 nor the advertising limitations of A.A.C. R14-4-103 are applicable to the offer or sale of such securities.

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 "Dee Riddell Harris".

DEE RIDDELL HARRIS
Director of Securities

DRH:PHG
Attachment

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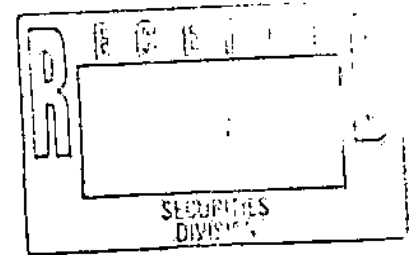
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*NOT ADMITTED IN D.C.

October 3, 1996

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



Re: Imperial Thrift and Loan Association

Ladies and Gentlemen:

On behalf of Imperial Thrift and Loan Association ("Imperial"), we are writing to request your interpretive opinion and a corresponding no action letter concerning the offer and sale by Imperial of depository products as described below to the general public in Arizona. A check payable to "Securities Division, Arizona Corporation Commission" for \$200 is enclosed.

Imperial

Imperial is a publicly held, California-chartered industrial loan company located in Glendale, California. California industrial loan companies are also known as thrift and loan companies and investment and loans. CAL. [FIN.] CODE § 18003. Imperial is organized and operates under the California Industrial Loan Law, CAL. [FIN.] CODE §§ 18000 *et seq.*, and is subject to supervision and regulation by the California Commissioner of Corporations (the "California Commissioner"). In addition, Imperial is a member of the Federal Deposit Insurance Corporation (the "FDIC"). Under the Federal Deposit Insurance Act, Imperial is a "state bank" as defined in Section 3(a)(2), 12 U.S.C. § 1813(a)(2). It is supervised and regulated by the FDIC as any other state bank and its deposit products are insured by the FDIC to the same extent as those of any other state bank.

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EC # 1594110
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Dee R. Harris, Director

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Imperial is engaged primarily in commercial lending. Its loans are secured primarily by income-producing property. At the present time, Imperial makes loans primarily secured by real estate. At June 30, 1996, Imperial had assets of \$640.5 million, of which the net loan receivables totaled \$545.4 million. Imperial's other assets consist primarily of cash, investment securities and mortgaged-backed securities totaling \$93.1 million at June 30, 1996. At June 30, 1996, Imperial's total shareholders' equity was \$83.9 million. Imperial's deposit products are passbook and certificate of deposit accounts. Technically known as "investment certificates" under CAL. [FIN.] CODE § 18315, these deposit products are debts of Imperial to its depositors, like the deposit products of nearly all national and state banks, and are covered by FDIC deposit insurance.

Imperial has requested that the United States Securities and Exchange Commission (the "SEC") treat its deposit products as exempt from registration under the Securities Act of 1933 as securities issued by a bank which are exempt from registration under Section 3(a)(2) of the Act. Historically, the SEC has routinely granted such requests by California thrift and loans, noting particularly the 'banking type powers' of such institutions, the extent to which they are regulated by the California Commissioner and the FDIC, and the FDIC deposit insurance applicable to their deposits. See, e.g., First Republic Thrift and Loan (no action letter avail. May 14, 1987); Foothill Thrift and Loan (no action letter avail. August 3, 1988); Fireside Thrift and Loan (no action letter avail. April 5, 1989); and The Morris Plan Co. of Ca. (no action letter avail. May 7, 1990). Imperial expects that the SEC will respond favorably to its request.

The Depository Instruments

Imperial proposes to offer and sell to the general public in Arizona depository products which it is authorized to issue under CAL. [FIN.] CODE Div. 7 Ch. 4 and §§ 18003.6, 18315 and 18321(o). Functionally, these depository products are debts of Imperial to the depositor, like the deposits in any FDIC-insured depository institution. The products include (i) certificates of deposit, which are term certificates, with a term ranging from 90 days to five years, and (ii) passbook or statement savings accounts (including money market accounts with limited check writing features) of the type widely available from banks, savings institutions and credit unions, which do not have a fixed term and or fixed rate of interest. These products are all "insured deposits" within the scope of Sections 3(l), 7(i) and 11(a) of the Federal Deposit Insurance Act, 12 U.S.C. §§ 1813(l), and 1817(i) and 1821(a), and the FDIC's regulations thereunder at 12 C.F.R. Part 330. Imperial may in the future elect to offer and sell additional types of deposit products, such as checking-type accounts, to the extent permitted under California law and FDIC regulations. The depository products would be offered and sold by employees of Imperial who would not receive commissions in connection with such sales.

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Exemptions From Registration Under Arizona Law

We believe that there is an exemption from the requirement under Arizona law to register securities offered and sold to the general public in Arizona which applies to Imperial's depository products.

ARIZ. REV. STAT § 44-1843.A.2 exempts from registration any security issued by a state bank the business of which is supervised and regulated by an agency of Arizona or of the United States. We believe that Imperial should be considered a "bank" for purposes of this exemption. As noted above, the SEC has determined that institutions like Imperial are eligible for the exemption available to banks under the Securities Act of 1933, and Imperial expects to receive confirmation from the SEC that this view applies to Imperial as well. Imperial is a "state bank" for purposes of deposit insurance and regulation under the Federal Deposit Insurance Act, and is supervised thereunder by the FDIC in addition to being supervised by the California Commissioner. The extent of the FDIC's supervision of Imperial is the same as for state banks generally. The California Commissioner's supervision of Imperial is similar to the supervision to which California banks generally are subject. The company's capital and investment authority are subject to conditions and restrictions under state law (as well as under the Federal Deposit Insurance Act). Like all FDIC-insured state banks, Imperial is subject to the FDIC's regulations in Part 362 of 12 C.F.R., under which its equity investments are restricted generally to the same types and amounts of equity investments as are permissible for a national bank and its activities as principal are restricted generally to those permissible for national banks. Imperial is also subject to requirements of the Board of Governors of the Federal Reserve System which apply to state banks generally, such as reserve requirements, truth in savings disclosures under Regulation DD, 12 C.F.R. § 230, *etc.* The FDIC, which is the primary federal banking regulatory of Imperial, is an agency or corporate or other instrumentality of the United States created under Section 1 of the Federal Deposit Insurance Act, 12 U.S.C. § 1811.¹

In the past, the Arizona Securities Division has treated a California industrial loan association as a bank supervised and regulated by an agency of the United States. See, the letter issued by the Arizona Corporation Commission, dated March 30, 1994, Ariz. Sec. LEXIS 17 (copy attached as Exhibit A), concurring that investment certificates (*i.e.*, certificates of deposit) issued by California chartered industrial loan companies are exempt under ARIZ. REV. STAT. § 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.

¹ C. Long, BLUE SKY LAW (1993) at 4-17 to 4-18.

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We note that other states which have exemption provisions similar identical to ARIZ. REV. STAT. § 44.1843.A.2. treat an FDIC insured industrial loan company as a "bank" or "savings institution" for purposes of those exemptions. See, for example, the no action letter dated August 22, 1994, issued by the New Jersey Bureau of Securities and published at CCH BLUE SKY LAW REPORTS ¶ 40,645 (copy attached as Exhibit B), the adopting the view that certificates of deposit issued by a Utah industrial loan corporation should be treated as securities issued by and representing a debt of a bank organized and supervised under laws of a state, and therefore exempt from registration under N.J.S.A. 49:3-50(a)(3).

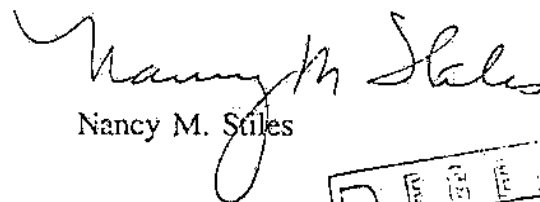
Assuming that our view concerning the exemption for Imperial's depository products from the securities registration requirement is correct, then it is also our view that Imperial's employees offering and selling such products would not be subject to the registration requirement under ARIZ. REV. STAT. § 44-1842.

Finally, we note that the rule of the Arizona Securities Division set forth in Sec. R14-4-103.C governs "any advertising, communications, prospectus, or sales literature of any kind" and, together with Sec. R14-4-103.D., prescribes certain requirements concerning such advertising and other materials. It is our view that these rules were intended to apply to offers made by a prospectus and related material, but not to the offer and sale of depository products of Imperial as described above. In this regard, we note that advertising of the rates for any depository product of Imperial are subject to the requirements of the Federal Reserve Board's Regulation DD on truth-in-savings.

Conclusion

For the reasons stated above, we request your concurrence with our views concerning exemptions from registration requirements under Arizona law and the nonapplicability of Sec. R14-4-103.C. and D., and your recommendation of no enforcement action with respect to Imperial's offer and sale of depository products to the general public in Arizona as described above. We would be happy to provide any further information upon request.

Yours truly,



Nancy M. Stiles

Enc.

cc: Dave M. Muchnikoff, P.C.
Michael L. Mayer, Esq.

