

44-1844 (A)(14)

JAMES MATTHEWS
EXECUTIVE SECRETARY



SECURITIES DIVISION
(602) 542-4242

MARCIA WEEKS
CHAIRMAN

RENZ D. JENNINGS
COMMISSIONER

DALE H. MORGAN
COMMISSIONER

ARIZONA CORPORATION COMMISSION

December 21, 1990

Brynn D. Goldenberg, Esq.
Gordon Hurwitz Butowsky Weitzen
Shalov & Wien
101 Park Avenue
New York, NY 10178

RE: INVESCO Retirement Trust and INVESCO Trust Company

Dear Ms. Goldenberg:

On the basis of the facts set forth in your letter of November 29, 1990 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 photocopies of your letter. 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:sw

enclosure

GORDON HURWITZ BUTOWSKY WEITZEN SHALOV & WEIN

101 PARK AVENUE

A PARTNERSHIP CONSISTING OF INDIVIDUALS AND PROFESSIONAL CORPORATIONS

NEW YORK, N.Y. 10178

THEODORE ALTMAN, P.C.
DAVID M. BUTOWSKY, P.C.
RONALD M. FE'IMAN
ALLAN R. FREEDMAN
KENNETH S. GERSTEIN
C. MARTIN GOLDENBERG, P.C.
JEFFREY M. GUSOFF
STEPHEN A. HELMAN
RICHARD M. HERVEY
PAUL RICHARD KARAN

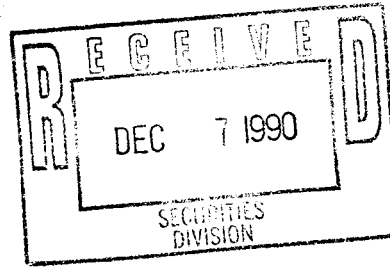
BONNIE D. PODOLSKY
ELLIS L. REEMER
DOUGLAS S. RICH
VICTOR J. ROCCO
KEITH L. SCHAITKIN
BARRY D. SHALOV
STUART M. STRAUSS
BRUCE J. WEIN, P.C.
MARC WEITZEN
LAWRENCE J. ZWEIFACH

JORDAN L. BLEZNICK

STEVEN A. COPLOFF

MARJORIE SYBUL ADAMS
DAVID M. BRENSILBER
JULIANNE BRENZA
DENNIS M. BRESNAN
JUNE H. BRETTLER
ANDREW H. CHARLES
DIANE DE SEVE
CLIFFORD S. DICKSON
DANIEL A. ETNA
BRYNN D. GOLDENBERG
ELIZABETH HUBBELL
SOO WON HWANG
ELLEN JANCKO-BAKEN
STACY L. KATZ
GAIL M. KELLY
JONATHAN KLEIN

MICHELLE R. LEBERFELD
BRUNO DOV LERER
NANCY D. LIEBERMAN
NEAL MERKER
RONALD B. MCGUIRE
CARIN F. MUHLBAUM
LOIS H. NITTI
JAY M. PELTZ
MICHAEL B. REUBEN
RICHARD A. ROTH
BRUCE D. SHAPIRO
KARIM A. SOUEID
CLAIRE R. TELECKI
WILLIAM R. WEINSTEIN
ISAAC M. ZUCKER



WRITER'S DIRECT DIAL NUMBER
(212) 370-8985

TELEPHONE (212) 557-8000
TELECOPIER (212) 697-5110
(212) 818-0741
(212) 986-5112
(4th FLOOR)

C. LEONARD GORDON, P.C.
DAVID N. HURWITZ
COUNSEL

WASHINGTON, D.C. OFFICE
1275 PENNSYLVANIA AVENUE, N.W.
FIFTH FLOOR
WASHINGTON D.C. 20004
TELEPHONE (202) 638-6244
TELECOPIER (202) 638-6304
BERNARD WEXLER
COUNSEL

November 29, 1990

Katrina Rogers, Esq.
General Counsel
Arizona Corporation Commission
1200 West Washington Street
2nd Floor
Phoenix, Arizona 85007

Re: INVESCO Retirement Trust and INVESCO Trust Company

Dear Ms. Rogers:

We are writing on behalf of INVESCO Retirement Trust, a Collective Trust of INVESCO Trust Company For Participating Pension and Profit Sharing Trusts (the "Trust") and INVESCO Trust Company, a Trust Company organized and existing under the laws of the State of Colorado (the "Company"), to request the assurance of the Securities Division of the Arizona Corporation Commission (the "Division") that it will not recommend that the Arizona Corporate Commission take enforcement action under Article 16 of the Securities Act of Arizona (the "Act"), against the Trust or the Company, if the Company does not register as a broker-dealer and does not register the participation interests in the Trust, with the Commission, in reliance on Section 14-1844.14 of the Act.

Commission
November 29, 1990
Page 2

The Trust

The Trust, pursuant to its Amended and Restated Declaration of Trust dated August 28, 1989 (the "Declaration") a copy of which is attached hereto as Exhibit A for your convenience, is a collective trust maintained exclusively for the collective investment and reinvestment of monies contributed thereto by the Company in its capacity as a fiduciary for pension and profit sharing trusts (other than any self-employed retirement plan trusts which do not comply with the requirements of Rule 180 under the Securities Act of 1933, but including a collective investment fund) qualified under Section 401 of the Internal Revenue Code of 1954 and which are exempt from taxation under the provisions of Section 501(a) of said Code. Pursuant to the Declaration, the Company has the exclusive management and control of the Trust and the collective funds of the Trust which are established and administered by the Company (the "Collective Funds"). The Company owns all of the assets of the Trust and of the Collective Funds, as trustee.

To become a participant in the Trust (a "Participating Trust"), an authorized person of an eligible employee benefit plan (a "Plan") must execute the INVESCO Retirement Trust Participation Agreement (the "Participation Agreement"), attached hereto as Exhibit B. Each Participating Trust has a proportionate, undivided beneficial interest in the Trust and in the Collective Funds in which it is invested and shares ratably in the income thereof.

Pursuant to the Participation Agreement, the Participating Trust appoints the Company as an investment manager of a Plan with respect to the assets of a Plan placed under the management of the Company.

Commission
November 29, 1990
Page 3

Section 44-1844.14 Exemption for Transactions Involving Sale of Securities to Pension or Profit Sharing Trust

We believe that the sale of participation interests in the Trust ("Participation Interests") is exempt from the Act's registration requirements pursuant to Section 44-1844.14.

Section 44-1844.14 of the Act provides for an exemption from registration under the Act of securities sold pursuant to the following transactions:

"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."

The Participation Interests are securities which are in fact being sold to pension and profit sharing trusts. Consequently, their sale falls squarely within the Section 44-1844.14 exemption for "the sale or issuance of any . . . security, in connection with an employees' pension, profit sharing or other similar employee benefit plan"

In addition, the rationale behind the exemption indicates that the present situation is precisely the type of transaction to which the exemption was meant to apply. Section 44-1844.14 closely resembles the institutional investor exemption of Section 402(b)(8) of the Uniform Securities Act which provides an exemption for:

"[A]ny offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is

acting for itself or in some fiduciary capacity."¹ (emphasis added)

The Draftsman's Commentary to Section 402(b)(8) indicates that the rationale behind this exemption is that the specified organizations are sophisticated investors and, therefore, do not need the protection of a registration statement.² According to Long, Blue Sky Law Volume 12, §504 on the Justification of Section 402(b)(8),

". . . these organizations are thought to have the ability to fend for themselves. They are believed to have sufficient understanding of securities transactions in general to be able to ask pertinent questions so as to learn significant details about securities purchased. Further, they are believed to have sufficient economic leverage, through their ability to refuse a deal, to insure that their questions are fully answered."³

Our telephone conversation with you reinforced our understanding that Section 44-1488.14 was intended to reach transactions such as the transaction at issue in this letter. The Participation Interests will be sold to pension and profit sharing trusts which exhibit the appropriate level of financial sophistication necessary to exempt them from the safeguards afforded by registration. Therefore, the sale of Participation Interests to pension and profit sharing trusts should be exempt pursuant to Section 44-1844.14.

^{1/} Uniform Securities Act §402(b)(8)

^{2/} Joseph C. Long, Blue Sky Law, Volume 12, §504

^{3/} Id. at §504

Commission
November 29, 1990
Page 5

Exemption From Registration as Broker-Dealer

Section 44-1842 of the Act provides "[i]t is unlawful for any dealer to sell or purchase or offer to sell or buy any Securities, or for any salesman to sell or offer for sale any securities within or from this State unless the dealer or salesman is registered as such pursuant to the provisions of Article 9 of this chapter."

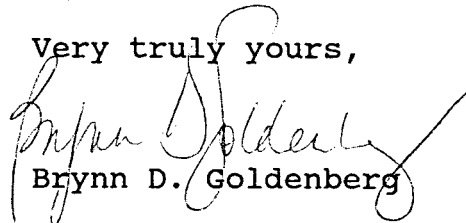
However, Section 44-1844 (discussed above) provides that the provisions of Section 44-1842 do not apply to any transactions exempt pursuant to Section 44-1844. Therefore, if the transactions described in this letter are exempt from registration under Section 44-1844, the Company will also be exempt from registration as Broker-Dealer.

Based on the foregoing, we are seeking the Division's no-action assurance regarding the sale of Participation Interests in the Trust in the State of Arizona without registration of the transaction under the Act and without registration of the Company as a Broker-Dealer under the Act.

In the event the Division makes a determination that it will be unwilling to provide the requested no-action assurance, we request the opportunity to speak to the Division prior to the issuance of its response.

If you have any questions regarding this letter or require additional information, please contact the undersigned at (212) 370-8985 or Hal Goldstein at (212) 370-8802. Thank you for your consideration of this matter.

Very truly yours,


Brynn D. Goldenberg

BDG/ksk