ARIZONA CORPORATION COMMISSION

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

March 30, 1995

Paul J. Roshka, Jr., Esq.
O'Connor Cavanagh
One East Camelback Road, Suite 1100
Phoenix, Arizona 85012-1656

RE: Primerica Financial Services Home Mortgages Limited Partnership of Arizona
A.R.S. § 44-1801(22)

Dear Mr. Roshka:

On the basis of the facts set forth in your firm's letters of March 15 and 29, 1995, the oral representations made by Primerica Financial Services in our conference call on March 28, 1995, and in reliance upon your firm's opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona (the "Act") should the proposed transactions take place within Arizona as set forth in your letters. You have represented to the Division that the limited partnership structure is the best suited for PFS to broker mortgage products in Arizona due to federal and state regulatory requirements governing the origination and brokering of mortgage loans. In particular, pursuant to A.R.S. § 6-943(F), absent the limited partnership structure, PFS salespeople would be deemed independent contractors under Arizona law, prohibiting their coverage under an Arizona mortgage bankers license. The Division does not believe the limited partnership described in your letters and in our telephone conversation satisfies all of the prongs of the investment contract analysis. In reaching the conclusion that the limited partnership interests to be issued do not constitute securities under the Act, the Division, in particular, is relying upon the following representations made by Primerica Financial Services Home Mortgages, Inc. ("PFS") and Primerica Financial Services Home Mortgages Limited Partnership of Arizona (the "Partnership"):

(1) The limited partnership interests do not appreciate in value, there is no opportunity for salespeople or others to acquire additional limited partnership interests, no cash consideration is paid for the interests by the salespeople, and the interests may not be retained upon termination.

(2) The payment structure for management services is the same in all of the PFS programs nationwide irrespective of whether the mortgage broker is structured as a limited partnership or otherwise.

(3) Each limited partner will be paid a percentage of the dollar amount of loans they personally broker, with the exception of certain supervisors including Regional Vice Presidents, who may be compensated for their supervisory, management and training activities as a percentage of the dollar amount of loan products brokered by the salespeople they service.

(4) The Partnership does not have a bonus or similar incentive program entitling limited partners to a percentage of the profits of the Partnership. Other than the compensation to limited partners referred to in item (3) above, limited partners will not receive or be entitled to receive any distribution or other payment under the Partnership Agreement.

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. The policy established by this letter will be construed very narrowly.

To the extent that the transactions do not take place as described in your letters or a material change in the facts occurs which causes these partnership interests to be deemed to be "securities" for purposes of the Act, then the anti-fraud provisions of the Act would be applicable ab initio.

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,

VICTOR RODARTE
Deputy Director of Securities

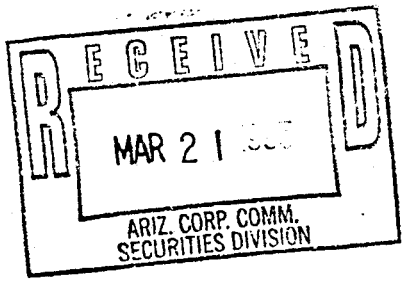
VR:lb
Attachment

O'CONNOR CAVANAGH

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

Paul J. Roshka, Jr.
602-263-2558

March 15, 1995



Arizona Corporation Commission
Securities Division
234 North Central Avenue
Phoenix, Arizona 85004

Attention: Leslie Block, Associate General Counsel

Re: Request for No Action Letter

Ladies and Gentlemen:

On behalf of Primerica Financial Services Home Mortgages, Inc., a Georgia corporation ("PFSHMI"), we hereby request that the Arizona Corporation Commission issue a "no action" letter confirming that the limited partnership interests (as described below) to be created by PFSHMI in the Primerica Financial Services Home Mortgages Limited Partnership of Arizona (the "Partnership") are not "securities" under the Arizona Securities Act (the "Act") and may be offered in the State of Arizona without regard to the registration and other requirements of the Act. A check in the amount of $200 is enclosed in payment of the required fee.

FACTS

Primerica Financial Services ("PFS") sells insurance and other financial products through a network of subsidiaries and affiliated entities. One such entity is the Partnership, through which PFS will broker mortgage loans under PFSHMI's SMART loan program. PFS has determined that, in light of state and federal regulatory requirements governing the origination of mortgage loans, the limited partnership is the structure best suited to the brokerage of its mortgage products. We understand that the Partnership will operate in the following manner. PFSHMI will be the general partner (the "General Partner") of the Partnership, which Partnership will obtain a mortgage bankers license under the Arizona Mortgage Brokers and Mortgage Bankers Act. The limited partners (the "Limited Partners") will be salespeople who, as independent contractors, offer other PFS financial products on behalf of other PFS

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subsidiaries and affiliated entities. Upon becoming Limited Partners in the Partnership, these salespeople will also be entitled to offer mortgage loan products. Limited Partners will not be required to make capital contributions to the Partnership but, Limited Partners will be required to furnish their own supplies, equipment and office space. However, it is anticipated that expenses will be minimal. For example, most of the Limited Partners will conduct Partnership business either from their homes or from offices also used to conduct business on behalf of the PFS subsidiaries and affiliated entities. Limited Partners will not participate in establishing any policy concerning the management of the Partnership.

The Limited Partners will contact prospective buyers regarding the sale of PFS financial products. These solicitations will generally occur at the home of the prospective borrower and not at the home or office of the Limited Partners. Mortgage loans brokered by the Limited Partners, on behalf of the Partnership, will be originated by Commercial Credit Corporation ("CCC"), an affiliate of PFSHMI. All of the mortgage lending promotional materials used by the Limited Partners will indicate that the Limited Partners are acting as representatives of the Partnership. If the customer elects to apply for a mortgage loan, the Limited Partner will assist in the preparation of the loan application supplied by CCC. The Limited Partner will not negotiate the amount or any other terms of the mortgage loan.

Limited Partners will receive commission distributions ("Commission Distributions") from the Partnership based solely on the volume and amount of mortgage loan products brokered by each Limited Partner. Each Limited Partner, in connection with the execution of the Partnership Agreement, will expressly acknowledge that except for the Commission Distributions, Limited Partners will not receive or be entitled to receive any distribution or other payment under the Partnership Agreement, either while such Limited Partner is a Limited Partner of the Partnership, upon the withdrawal of such Limited Partner from the Partnership or upon the dissolution, winding up or liquidation of the Partnership. All net profits and all net losses from the operation of the Partnership will be allocated to the General Partner. The General Partner will enter into separate agreements with certain individuals to obtain services for the Partnership including management, supervision and training of Limited Partners. The individuals providing such services and receiving compensation therefor will include a few of the Limited Partners.

DISCUSSION

The definition of "security" contained in Section 44-1801.22 of the Act is patterned after and virtually identical to Section 2(1) of the Securities Act of 1933. Therefore, the ACC and courts interpreting the Act look to federal interpretations of securities laws for

guidance. First Citizens Federal Sav. and Loan Ass'n v. Worthen Bank and Trust Co., N.A., 919 F.2d 510 (9th Cir. 1990). Generally, limited partnership interests are analyzed under the investment contract concept included within the statutory definition of a security, as interpreted by federal and state courts.[1] See e.g., Kosnoski v. Bruce, 669 F.2d 944 (4th Cir. 1982), cert. denied, 459 U.S. 832.

In SEC v. W.J. Howey Co., 328 U.S. 293 (1946), the Supreme Court set forth a test for determining whether a transaction involved an investment contract. Under the "Howey test," an investment contract "means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or third party."

The first element of the Howey test requires an investment of money. Courts in the Ninth Circuit have stated that an "investment of money" means that an investor commits assets to the enterprise in such a manner as to subject himself to financial loss. Cordas v. Specialty Restaurants, Inc., 470 F. Supp. 780 (D. Oregon 1979). Although an investment under an investment contract need not take the form of cash under the holding of the Supreme Court in International Brotherhood of Teamsters v. Daniel, 439 U.S. 551 (1979), the purchaser must give up some tangible and definable consideration in return for an interest that has substantially the characteristic of a security. The Supreme Court has stated that labor in return for compensation is not an investment in exchange for a security interest.

Under the Partnership Agreement, the Limited Partners do not contribute cash or other capital other than nominal expenditures for office materials used in conducting the Partnership's business. Although the Limited Partners agree not to sell mortgage loan products for others, because this agreement is made out of the desire to sell services for compensation, it should not be considered "tangible consideration." The Limited Partners, therefore, are at no risk of financial loss by reason of their association with the Partnership. Thus, the first element of the Howey test is not present.

The second element of the Howey test is that the party is engaged in a "common enterprise." Two tests have been adopted by courts to analyze the common enterprise prong of

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[1] A minority of circuits, including the Ninth Circuit, may also apply the "risk capital test," if applicable. See, Great Western Bank & Trust v. Kotz, 532 F.2d 1252 (9th Cir. 1976). Generally, the risk capital test will be applied when there is an investment of money in a poorly capitalized venture. Here, however, the Limited Partners will not make an investment of money or make any other capital contribution to the Partnership. Therefore, the risk capital test does not apply to the present facts.

the Howey test: (1) horizontal commonality (which requires a pooling of funds collectively managed by a promoter or third party) and (2) vertical commonality (which requires a positive correlation between the success of the investor and the success of the promoter without a pooling of funds). Viaro v. Clayden, 734 P.2d 110 (Ariz. App. 1987). The Ninth Circuit has narrowed the test for vertical commonality. In SEC v. Glenn W. Turner Enterprises, 474 F.2d 476, 482. (9th Cir. 1973), cert. denied 414 U.S. 821 (1973), the court stated that "a common enterprise is one in which the fortunes of the investor are interwoven and dependent upon the efforts and success of those seeking the investment or of third parties." Id. at 482. In Arizona, the presence of either horizontal or vertical commonality satisfies the common enterprise test. Id. at 114.

Here, only the General Partner will make a capital contribution. Moreover, because each Limited Partner receives compensation based solely on that Limited Partner's individual productivity, there is no sharing of profits. Therefore, there is no pooling of funds and no horizontal commonality. However, the Partnership structure may satisfy the vertical commonality test. As discussed below, although the Limited Partners rely on the managerial efforts of the General Partner, their "fortunes" are substantially dependent on their own efforts and not upon the efforts of the General Partner. However, because the General Partner's success depends upon the success of the Limited Partners, their fortunes may be interwoven under the test stated in Viaro. See also Sullivan v. Metro Productions, Inc., 724 P.2d 1242 (Ariz. App. 1986) (where investor financed purchase of videotape program with a promissory note, court found interwoven fortunes because promoter would receive payment if distribution of tape by investor produced revenues). Because the other Howey factors are not met, however, a finding of commonality would not preclude a determination that the Limited Partnership interest are not securities.

The final element of the Howey test is whether investors expect a return of profit that will be derived solely from the efforts of others. The Ninth Circuit has adopted a liberal interpretation of the term "solely" and will look to "whether the efforts made by those other than the investor are undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise." Turner, 474 F.2d at 482 (finding that a limited degree of investor participation does not preclude a finding of an investment contract). In many limited partnership cases, the courts have found an investment contract because, in such cases, the limited partner has not actively participated in the partnership's enterprise. See L & B Hosp. Ventures v. Healthcare Intern., 894 F.2d 150 (5th Cir. 1990) and Kosnoski v. Bruce, 669 F.2d 944 (4th Cir. 1982). In comparison, where the investor has substantial control over the success of the enterprise, the court has found no investment contract. For example, in Frazier v. Manson, 651 F.2d 1078 (5th Cir. 1981), the court held that limited partnership interests were

not securities where the plaintiff was one of two partners in a partnership which sought to put together real estate investment partnerships using both the soliciting abilities of the defendant partner and the property management skills of the plaintiff. The court found that the plaintiff's right to exert control over the enterprise negated the possibility that his limited partnership interests were securities.

Under the Partnership Agreement, the success or failure of the enterprise is wholly dependent on the efforts of the Limited Partners to sell loan products. While the General Partner will provide managerial and administrative support, the revenues for the Partnership will be generated from the Limited Partner's solicitation of loan applicants. Moreover, the Limited Partners will exercise a great deal of control over the success of the enterprise by choosing whether to solicit loan business at all and, if so, whom to solicit. Finally, the expectations of the Limited Partners are clearly indicated by their express acknowledgement, made in connection with execution of the Partnership Agreement, that each "has entered into the Partnership Agreement without any investment intent...."

The Supreme Court has stated that the Howey test is to be applied in light of "the economic realities of the transaction." United Housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975). The economic reality of the Partnership transaction is that the Limited Partners are acting as sales agents of the Partner and they receive compensation, rather than "profits" or "yields," based solely on their own efforts. The true nature of the transaction is also illustrated by how the agents will be offered the opportunity to become Limited Partners. See U.S. S.E.C. v. Lauer, 864 F.Supp. 784 (N.D.Ill. 1994) (in determining if interest is a security, the court looked to how security was marketed). Rather than being sold as an investment through cold calls or by finders who receive fees upon solicitation, most Limited Partners will be presented with this additional selling opportunity ancillary to other sales relationships with PFS. Looking both at the separate elements of Howey and at the economic reality of the transaction, it is clear that the Limited Partnerships are not securities.

Based on the foregoing, we hereby request that you confirm that the Limited Partnerships will not be considered "securities" as defined in the Arizona Act, and that the Limited Partnerships may be offered in the State of Arizona without complying with the registration or other requirements of the Arizona Act.

The Partnership expects to obtain its mortgage bankers license by April 1, 1995. We therefore would greatly appreciate a reply to this letter by March 31, 1995. If you have any further questions or comments, please call me at 263-2558. Thank you for your assistance.

Sincerely,

Paul J. Roshka, Jr.
For the Firm

PJR:sr

Enclosure

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Writer's Direct Dial Number
(602) 263-2616

Client-Matter Number
24771-1

March 29, 1995 10:17am

TELECOMMUNICATION INFORMATION COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME	COMPANY	FACSIMILE NO.
Leslie Block	**Arizona Corp. Commission**	**542-3583**

FROM: **Sara R. Ziskin**

TOTAL NUMBER OF PAGES INCLUDING THIS COVER PAGE: 4

IF YOU DO NOT RECEIVE ALL 4 PAGE(S), PLEASE CALL: (602) 263-2844.

MESSAGE:

O'CONNOR CAVANAGH

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

Sara R. Ziskin
602-263-2616

File No.: 24771-1

March 29, 1995

Leslie Block, Esq.
Arizona Corporation Commission
1300 W. Washington, 3rd Floor
Phoenix, Arizona 85007

Re: Primerica No Action Request

Dear Leslie:

The following letter summarizes certain points discussed in our conference call on March 28, 1995 and is supplemental to our Request for No Action Letter dated March 15, 1995 (the "Request Letter"). All capitalized terms, if not defined herein, refer to the terms as defined in the Request Letter.

1. Mortgage Banking Law Considerations

Under the mortgage lending laws of almost all states, Primerica Financial Services Homes Mortgages, Inc. ("PFSHMI") brokers and originates mortgage loans through representatives and supervisors of Primerica Financial Services ("PFS") who are independent contractors. However, PFSHMI has been required to use an alternative limited partnership arrangement in North Carolina and Arizona as a result of limitations in the mortgage lending licensing statutes of those states. In Arizona, the Partnership was established and structured to meet the specific statutory requirements of the Arizona Mortgage Brokers and Mortgage Bankers Act, A.R.S. § 6-901 *et seq.* (the "Mortgage Act"). The mortgage banker licensing provisions of the Mortgage Act provide in A.R.S. § 6-943.F as follows:

> F. If a licensee is a person other than a natural person, the license issued to it entitles all officers, directors, members, *partners,* trustees and employees of the licensed corporation, partnership, association or trust to engage in the mortgage banking business if one officer, director, member, partner, employee or trustee of the person is designated in the license as the individual responsible for the person under this article. If a licensee is a natural person, the

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> license entitles all employees of the licensee to engage in the mortgage banking business. If the natural person is not a resident of this state, an employee of the licensee shall be designated in the license as the individual responsible for such licensee under the provisions of this article. *For the purposes of this article an employee does not include an independent contractor.* For the purposes of this article, a responsible individual shall be a resident of this state, shall be in active management of the activities of the licensee governed by this article and shall have not less than three years' experience in the business of making mortgage banking loans or equivalent experience in a related business. (Emphasis added).

Consequently, use of a limited partnership arrangement will result in the Limited Partners being covered by the Partnership's mortgage banker license to be issued by the Arizona State Banking Department. This conclusion has been confirmed in our discussions with the State Banking Department.

2. Value of Limited Partnership Interests

As noted in our Request Letter, the Limited Partners will not be required to make capital contributions to the Partnership. Limited Partners will receive Commission Distributions from the Partnership based solely on the dollar value of mortgage loan products brokered by each Limited Partner. Such commissions will be calculated using the same formulas applied to PFSHMI representatives in other states who broker loans as independent contractors rather than Limited Partners. Moreover, Limited Partners will not receive bonuses, distributions in excess of earned Commission Distributions or a share of the Partnership's profits based on production.

The Limited Partnership interests will not appreciate in value based on length of time a representative remains a Limited Partner or based upon the volume or amount of loan products brokered by a Limited Partner. Each Limited Partner, in connection with the execution of the Partnership Agreement, will expressly acknowledge that, except for accrued Commission Distributions, Limited Partners will not receive or be entitled to receive any distribution or other payment under the Partnership Agreement upon the withdrawal of such Limited Partner from the Partnership or upon the dissolution, winding up or liquidation of the Partnership. The Limited Partnership interests, therefore, do not have a negotiated cash or investment value. Rather, as discussed above, the interests are a vehicle through which PFS representatives in Arizona may lawfully broker mortgage loan products in compliance with the Mortgage Act.

O'CONNOR CAVANAGH

3. Payment for Management Services

PFSHMI, the General Partner of the Partnership, enters into separate agreements with certain senior PFS representatives, including Regional Vice Presidents, for supervisory and management services. The fees paid for such services in connection with activities of the Limited Partners are equal to a percentage of the dollar value of mortgage loan products brokered by the "writing" representatives in a supervising representative's group. The percentage does not vary based on the volume or amount of products sold by writing representatives. The percentages used to calculate supervisory fees related to loans brokered by Limited Partners are the same as the percentages used to calculate supervisory fees related to loans brokered by PFSHMI representatives in states where the limited partnership structure is not required by state mortgage lending licensing laws. The PFS structure provides for a hierarchy of supervisors that may result in supervisory fees being paid to more than one supervisor.

Thank you again for your cooperation with us in trying to meet a tight timetable. If you have any further questions or require additional information, please do not hesitate to call me at 263-2616, Lisa Tsiolis at 263-2656 or Gil Rudolph at 263-2768.

Very truly yours,

Sara R. Ziskin
For the Firm

SRZ:sr

cc: Gerald L. Baxter, Esq.
Debbie L. Rosen
Gilbert L. Rudolph, Esq.
Lisa R. Tsiolis, Esq.