



State of Utah
Department of Commerce
Division of Securities

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Division Director

December 2, 2003

Mr. David Moore
State Farm Insurance Companies
One State Farm Plaza
Bloomington, IL 61710-0001

RE: State Farm Request for Interpretive Opinion

Dear Mr. Moore:

The Utah Division of Securities ("Division") has reviewed your request for a no-action letter pursuant to the authority granted by § 61-1-25 (5) of the Utah Uniform Securities Act ("Act") and § R164-25-5 of the Utah Administrative Code ("UAC"). In your request, you describe a scenario where State Farm Mutual Automobile Insurance Company's ("State Farm") independent insurance agents ("Sales Representatives") refer potential clients to purchase the CDs from State Farm Financial Services, F.S.B. ("State Farm Bank") and receive a referral fee for doing so.

The Division considered several factors in reaching its conclusion. The most persuasive of these factors were: 1) State Farm Bank is a federal savings bank that is chartered, regulated and examined by the Office of Thrift Supervision pursuant to federal law. 2) The CDs are FDIC insured. 3) The Sales Representatives do not accept cash from or make withdrawals on behalf of State Farm Bank Customers. 4) The CDs are issued directly from the bank to the customers and are not issued through the Sales Representatives. 5) The Sales Representatives are compensated only for referring potential purchasers to State Farm Bank. 6) The Sales Representatives will not create a secondary market for the CDs. 7) The Sales representatives will not add any enhancements or features to the CDs offered by State Farm Bank, and the CDs are not callable. 8) The Sales Representatives will offer State Farm Bank CDs exclusively. Based upon these factors, the Division will not recommend any enforcement or administrative action against State Farm for not licensing the Sales Representatives as agents, as defined in §61-1-13(2) of the Act, if the transactions proceed as described in your letter.

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This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the opinion of the Division on enforcement or administrative actions.

As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, this No-Action Letter relates only to the transaction described above and will have no value for future similar transactions and does not absolve any party involved from complying with the anti-fraud provisions contained in § 61-1-1 of the Act.

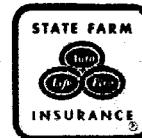
Respectfully,

A handwritten signature in cursive script that reads "Paula W. Faerber".

Paula W. Faerber

Enclosure

State Farm Insurance Companies



Corporate Headquarters
One State Farm Plaza
Bloomington, Illinois 61710-0001

September 22, 2000

VIA AIRBORNE EXPRESS

Mr. David Wayment, Esquire
Utah Division of Securities
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84114-6760

Re: FDIC-Insured Deposit Products under the Utah Uniform Securities Act

Dear Mr. Wayment:

State Farm Financial Services, F.S.B., Bloomington, Illinois ("State Farm Bank"), an FDIC-insured, federal savings bank subsidiary of State Farm Mutual Automobile Insurance Company ("State Farm"), requests that the Utah Department of Commerce, Division of Securities (the "Division") provide a no-action letter to State Farm Bank stating that certificates of deposit ("CDs") issued by State Farm Bank are not securities under the Utah Securities Act (the "Act"). In support of this ruling request, we are providing a short description of the proposed deposit activities of State Farm Bank in Utah. We also are providing a short analysis of these activities as they relate to the Act.

I. Background and Description of Products Marketed by Sales Representatives

State Farm Bank was established on March 12, 1999, as an FDIC-insured federal savings bank subsidiary of State Farm. As a federal savings bank, State Farm Bank is chartered, regulated, and examined by the Office of Thrift Supervision (the "OTS") pursuant to federal law.

State Farm Bank recently began providing deposit and loan products and services to customers in Utah through State Farm's exclusive network of independent agents ("Sales Representatives"), as authorized by the Home Owners' Loan Act (12 U.S.C. §§ 1461 *et seq.*) Over time, State Farm Bank expects to have customers nationwide. Sales Representatives sell State Farm insurance products, but are not employees of State Farm.¹ All Sales Representatives deal exclusively with State Farm, pursuant to the terms of State Farm agent agreements.

¹ State Farm also employs approximately 650 trainee agents nationwide, who are considered employees of State Farm temporarily until they complete their training. These agents are not employees of State Farm Bank.

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Each Sales Representatives who is currently offering deposit and loan products in Utah on behalf of State Farm Bank is licensed with the Division as an agent of State Farm VP Management Corp. ("SFVPMC"). SFVPMC is a broker-dealer registered with the NASD and with the Division, and it sells variable insurance products issued by life insurance companies affiliated with State Farm. I will refer to those Sales Representatives who are currently offering the deposit and loan products as "Licensed Sales Representatives." Each Licensed Sales Representative has successfully completed both NASD Series 6 and 63 exams. For your information, I have included as "Attachment A" an organizational chart detailing the relationships of the various State Farm companies and the Sales Representatives.

In the near future, State Farm Bank intends to begin marketing its products and services in Utah through Sales Representatives who are not licensed as agents with the Division ("Unlicensed Sales Representatives").

All Sales Representatives marketing State Farm Bank products and services enter into a separate agreement with State Farm Bank, a copy of which is enclosed for your reference as "Attachment B." Under the terms of that agreement, Sales Representatives offer State Farm Bank's products to customers on an exclusive basis. It is expected that Sales Representatives will provide information primarily through mailings and through telephone and personal contacts with customers. Sales Representatives also will display State Farm Bank product brochures in their offices. In addition, Sales Representatives may perform ministerial functions to assist customers in completing applications for products of State Farm Bank or, alternatively, may refer customers to a State Farm Bank call center representative who will assist the customer in obtaining a desired product or service.

The Sales Representatives will not accept any cash deposits or make any withdrawals on behalf of State Farm Bank customers. Sales Representatives merely will receive a commission of \$25 from State Farm Bank for each State Farm Bank deposit account that is opened, regardless of the amount of the deposit.

The State Farm Bank deposit products that will be marketed by Sales Representatives are conventional, FDIC-insured deposits (checking accounts, savings accounts, money market accounts, and non-negotiable CDs). State Farm Bank currently provides deposit products, loan products, and services through Sales Representatives to customers in Arizona, Illinois, Missouri, Nevada and New Mexico. These products and services are currently available throughout the United States via the Internet, mail and via State Farm Bank's Call Center. Sales Representatives will not create a secondary market with respect to the sale of CDs issued by State Farm Bank or otherwise add enhancements or features that might cause the deposits to be considered "securities" for purposes of federal securities laws or for purposes of the Act.²

² Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 756 F.2d 230 (2d Cir. 1985) (Second Circuit found that a Merrill Lynch CD program included special enhancements, including a secondary market for bank-issued certificates of deposit and

II. Discussion

A. Federal Securities Laws

The federal securities laws generally do not treat an FDIC-insured CD as a "security." Bank "CDs" are not specifically included in the list of covered instruments in the definitions of "security" under the Securities Act of 1933 (the "1933 Act") or the Securities Exchange Act of 1934 (the "1934 Act").³ Interpreting the federal securities laws, the Supreme Court held in Marine Bank v. Weaver, 455 U.S. 551 (1982) that FDIC-insured CDs are not "securities" within the meaning of the 1934 Act. In reaching its conclusion, the Court explained that the CDs at issue were issued by a federally regulated bank subject to a comprehensive set of federal regulations. The Court noted that the CDs are protected by reserve, reporting, and examination requirements under the federal banking laws that are designed to protect the solvency of banks. In addition, the Court emphasized that the deposits are insured by the FDIC and, as a result, a purchaser of a CD is virtually guaranteed payment in full. The Court determined that, in light of the protections provided by the comprehensive federal bank regulatory system, treatment of CDs as securities under the federal securities laws was unnecessary.

B. Utah Securities Act

The definition of "security" under the Act is virtually identical to the definition of "security" under federal law.⁴ See § 2(1) of the 1933 Act (15 U.S.C. § 77b(1)), § 3(a)(10) of the 1934 Act (15 U.S.C. § 78c(a)(10)), and Utah Code § 61-1-13(24). As you know, Utah is one of approximately 35 states that has adopted substantially all of the provisions of the Uniform Securities Act, including in particular its definition of "security." Other states have relied on the rationale of Marine Bank in interpreting their respective definitions of "security."⁵

monitoring of financial conditions of banks issuing certificates of deposit, and that as a result of the enhancements provided by Merrill Lynch the sale of the certificates of deposit through the program with the enhancements resulted in the sale of "securities" under the federal securities laws).

³ See section 2(1) of the 1933 Act (15 U.S.C. § 77b(1)), and section 3(a)(10) of the 1934 Act (15 U.S.C. § 78c(a)(10)).

⁴ The Uniform Securities Act defines the term "security" to include, among other instruments, any note, stock, treasury stock, bond, debenture, evidence of indebtedness, investment contract, and voting-trust certificate. The Act does not specifically include FDIC-insured deposits in the definition of "securities." Uniform Sec. Act § 401(l).

⁵ See, Wrede v. Exchange Bank of Gibbon, 531 N.W.2d 523 (Neb. 1995) (Nebraska Supreme Court followed Marine Bank, holding that an FDIC-insured CD, which constituted a loan of money to a heavily regulated banking institution at a fixed rate of interest with virtually no risk of loss, would not fall within the ambit of Nebraska securities laws) and see, e.g., Ayala v.

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We have located no binding legal authority in Utah regarding the issue of whether FDIC-insured CDs issued by a federal savings bank constitute securities under the Act. We have, however, located an administrative ruling in which the Division held that FDIC-insured CDs were exempt from registration under the Act. See 1988 Utah Sec. No-Act. Lexis 158 (January 28, 1988), a copy of which I enclose as "Attachment C." In that ruling, the person who requested that ruling and the Division just assumed that FDIC-insured CDs constituted securities.

Where a statute is silent and there is no Utah case law directly on point, Utah courts would look by analogy to decisions by federal courts under the 1933 Act and 1934 Act and under state law in the states that have adopted the Uniform Securities Law for guidance in interpreting the definition of "security." Under the relevant federal precedents of Marine Bank and Gary Plastic Packaging Corp., the facts of State Farm Bank are much more similar to those in Marine Bank than to the facts in Gary Plastic Packaging Corp. For example, unlike the CD program in Gary Plastic Packaging Corp., the Sales Representatives who sell CDs will not add any enhancement to or make secondary market in such products. Moreover, as was the case in Marine Bank, the securities laws of Utah do not have to be interpreted as applicable to conventional FDIC-insured CDs because of the protections afforded customers of State Farm Bank by a comprehensive federal bank regulatory system.

C. Protections for Customers of State Farm Bank

Under the regulatory framework applicable to insured depository institutions, depositors of State Farm Bank would be afforded the full benefit of the comprehensive set of federal regulations governing deposit activities of State Farm Bank – even where customers of State Farm Bank deal with Sales Representatives. State Farm Bank must conduct its deposit activities in a manner consistent with applicable federal laws and regulations, including, but not limited to, the disclosure and other requirements of the Truth in Savings Act (12 U.S.C. §§ 4301 et seq.), and Sales Representatives are subject to the deposit broker notification and record keeping requirements under the Federal Deposit Insurance Act (12 U.S.C. § 1831f-1).⁶ The OTS also has the authority to conduct on-site examinations at the office of any Sales Representative to review the agent's compliance with federal banking laws. (See the copy of the OTS' letter dated June 16, 2000, confirming OTS' regulatory and examination authority, which I have enclosed as "Attachment D.") As a condition to participation in the marketing of State Farm Bank products, Sales Representatives must agree to act in accordance with all applicable laws and regulations and all guidelines, procedures, and policies established by State Farm Bank, and must

Jamaica Savings Bank, 468 N.Y.S.2d 306 (1983) (New York court found that time deposits were not "securities" under New York law, which is not a Uniform Securities Act state).

⁶ Other requirements include the anti-tying provisions of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. §§ 1971 et seq.).

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successfully complete training required by State Farm Bank. State Farm Bank, moreover, has established a comprehensive compliance plan to ensure Sales Representatives' compliance with all applicable laws and regulations.

Further, because the CDs issued by State Farm Bank are FDIC-insured, depositors generally are guaranteed payment in full.⁷ Such a guarantee eliminates risk to depositors, and supports a conclusion that these deposits do not require protections afforded by federal or state securities laws. Finally, Sales Representatives will not accept cash deposit funds from customers of State Farm Bank and will not have custody or possession of customer funds in connection with the deposits (other than perhaps mailing a customer's deposit at the request of the customer). This arrangement reduces the potential for loss or theft of deposit funds, and reduces risk to depositors of State Farm Bank.

D. Request for Issuance of No-Action Letter by the Division

For the reasons discussed above, we respectfully request that the Division provide State Farm Bank with a no-action letter ruling that CDs issued by the State Farm Bank are not securities under the Act. We further request that the Division specify that its ruling applies regardless of whether the amount a customer has on deposit with the State Farm Bank exceeds the FDIC insurance limit.

If the Division cannot provide the ruling requested in the above paragraph, then Unlicensed Sales Representatives will be trained to not sell CDs issued by State Farm Bank. However, there are circumstances in which State Farm Bank would like to pay a commission for the sale of a CD to an Unlicensed Sales Representative. If a person purchases a CD through an alternative sales channel (such as the Internet, the mail, or the call center) and if the CD purchaser is a regular insurance customer of the Unlicensed Sales Representative, State Farm Bank would like to pay a commission to the Unlicensed Sales Representative for the customer's purchase of the CD. Payment of commission in this situation is designed to reward the Unlicensed Sales Representatives for developing the "State Farm" brand name with the customer. Paying the commission to the Unlicensed Sales Representative will not alter State Farm Bank's prohibition on these person's selling CDs.

Accordingly, if the Division is unable to rule that CDs do not constitute securities, we request that the Division rule that when a customer of an Unregistered Sales Representative purchases a CD through an alternative sales channel, State Farm Bank may pay a commission to the Unregistered Sales Representative with respect to the customer's purchase of the CD without violating any provision of the Act.

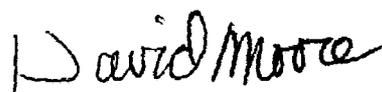
⁷ 12 U.S.C. § 1815. Due to the \$100,000 limit on FDIC deposit insurance, the account(s) of some depositors of State Farm Bank are not fully insured by the FDIC.

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We hope that this discussion is helpful and that you are able to provide State Farm Bank with a no-action letter requested. If you are unable to provide the no-action letter as described, we request the opportunity to meet with you and discuss the issues raised in this letter.

Sincerely,

A handwritten signature in cursive script that reads "David Moore".

David Moore
Counsel

Cc: Stan Ommen, President/CEO State Farm Bank
Todd Haynes, State Farm Bank Counsel