



State of Utah

DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

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December 4, 1996

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

Re: Pacific Crest Investment & Loan File # 005-7534-47/A57634-47

Dear Ms. Stiles:

This letter is in response to your letter dated November 26, 1996, regarding the proposed offering of certificates of deposit and depository instruments which will not exceed the limit within the scope of Section 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 Federal Deposit Insurance Corporation's ("the FDIC") regulations thereunder at C.F.R. Part 330 issued by Pacific Crest Investment & Loan ("PCIL") to the general public in Utah.

Based upon the information filed with this office, it is the position of the Utah Division of Securities (the "Division") that the securities described herein continue to be exempt from registration pursuant to § 61-1-14(1)(c) of the Utah Uniform Securities Act ("Act") as stated in our July 5, 1989 letter to PCIL's predecessor, Foothill Thrift & Loan. Also, please be aware that the National Securities Markets Improvement Act of 1996 signed into law October 11, 1996, would make PCIL's securities a "covered security" preempting state registration and exemption statutes.

Your letter, furthermore, requests an interpretative opinion on the exemption from registration of the offer and sale of PCIL's "depository products" to credit unions in Utah. Specifically, PCIL requests the Division's concurrence that a federal or state chartered credit union is included in § 61-1-14(2)(h) of the Act as an "other financial institution or institutional buyer."

Credit unions have the wherewithal by the very nature of their business to make informed investment decisions. Thus, the protection of these investors is not necessary. It is the position of the Division that security transactions as described in your request which may include an offer or sale to a Utah credit union are exempt from registration pursuant to § 61-1-14(2)(h) of the Act as credit unions are considered financial institutions for the purposes of this exemption.

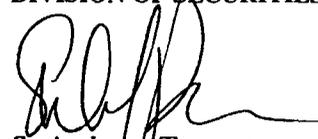


Nancy M. Stiles
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Please be advised that this approval is based on the representations made in your letter and relates only to the referenced securities and shall have no value for future similar offerings. It should be further noted that any different facts or conditions of a material nature might require a different conclusion.

Very truly yours,

**MARK J. GRIFFIN, DIRECTOR
DIVISION OF SECURITIES**



S. Anthony Taggart
Assistant Director

SAT/agb

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November 26, 1996

Mark J. Griffin, Director
Department of Commerce, Division of Securities
P.O. box 45808
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Re: Pacific Crest Investment & Loan

Dear Mr. Griffin:

On behalf of Pacific Crest Investment & Loan ("PCIL"), we are writing to request your interpretive opinion and a corresponding no action letter concerning the offer and sale by PCIL in Utah of certificates of deposit and depository instruments as described below to the general public and to credit unions as institutional buyers. We are enclosing a check for \$120.00 payable to the Division of Securities in connection with such request.

In 1989, PCIL's predecessor, Foothill Thrift & Loan ("Foothill"), received a letter from the State of Utah, Department of Business Regulation, Securities Division (copy enclosed), indicating that Foothill could rely on the exemption set forth in UTAH CODE ANN. § 61-1-14(1)(c), for its investment certificates (*i.e.*, certificates of deposit). PCIL expects that it may continue to rely on this letter, and asks for your concurrence that the position taken in the letter would continue to be effective not only with respect to the investment certificates described by Foothill in its 1989 request for a no action letter but also with respect to its other depository products described herein. In addition, PCIL seeks your concurrence that it may offer its products to credit unions as institutional buyers.

Provided below is a description of PCIL and the depository instruments proposed to be offered and sold in Utah.

PCIL

PCIL is a California-chartered industrial loan company located in Agoura Hills, California, and a wholly-owned subsidiary of Pacific Crest Capital, Inc., a Delaware corporation. California industrial loan companies are also known as thrift and loan companies.

CAL. FIN. CODE § 18003. PCIL 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, PCIL has been a member of the Federal Deposit Insurance Corporation (the "FDIC") since 1985. Under the Federal Deposit Insurance Act, PCIL 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 deposits are insured by the FDIC to the same extent as those of any other state bank.

PCIL is engaged primarily in commercial lending. Its loans are primarily secured by real estate, and, to a lesser extent, by personal property. At December 31, 1995, PCIL had assets of approximately \$260 million, of which about 75% were loans and the remainder were mainly securities of the U.S. Government and its agencies, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association; and net worth of approximately 8.5% of assets.

PCIL's certificates of deposit and passbook savings certificates are exempt from registration under the Securities Act of 1933 because the United States Securities and Exchange Commission (the "SEC") has concluded that they should be treated as securities issued by a bank which are exempt from registration under Section 3(a)(2) of the Act. See Exhibit A, which includes copies of a memorandum dated August 3, 1988 from the SEC's Office of Chief Counsel, Division of Corporation Finance, and a letter from Riordan & McKinzie to the SEC, dated June 6, 1988, concerning Foothill, which later changed its name to PCIL. The SEC noted particularly the 'banking type powers' of PCIL, the extent of regulation of PCIL by the California Commission and the FDIC, and the FDIC deposit insurance applicable to PCIL's deposits. These materials provide additional information about PCIL and the regulation and supervision of it by the California Commissioner and the FDIC.

The Depository Instruments

PCIL proposes to offer and sell to the general public in Utah certificates of deposit and other depository instruments which it is authorized to issue under CAL. FIN. CODE Div. 7 Ch. 4 and §§ 18003.6, 18315 and 18321(b). Functionally, the certificates of deposit are debts of PCIL to the depositor, like the certificates of deposit in any FDIC-insured depository institution, including federal deposit insurance coverage. The certificates of deposit are term certificates, with a term ranging from three months to five years, in face amounts ranging from up to \$100,000. The other depository instruments, representing, for example, NOW (negotiable order of withdrawal) accounts, money market accounts and passbook savings accounts of the type widely available from banks, savings institutions and credit unions, are also debts of PCIL to the depositor, but do not have a fixed term and or fixed rate of interest. These accounts and PCIL's certificates of deposit are all "insured deposits" within the scope of Section 3(1), 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. Except for sales to institutional investors, PCIL would not issue a depository instrument to a depositor in an amount which, when added to any other FDIC-insured deposits of the depositor, including principal and outstanding interest on deposits, would exceed the limit of FDIC deposit insurance.¹ The certificates of deposit and other deposit accounts would be sold by employees of PCIL who would not receive commissions in connection with such sales.

Sales to Credit Unions as "Institutional Buyers"

Like many states, Utah exempts from registration securities sold to 'institutional buyers,' including "a bank, savings institution... or other financial institution or institutional buyer...." UTAH CODE ANN. § 61-1-14(2)(h). PCIL seeks your concurrence that a federal or state chartered credit union would be included as an "other financial institution or institutional buyer" of its depository products for this purpose.

Credit unions can be chartered under federal or state law. State chartered credit unions are regulated by state regulatory agencies and by the National Credit Union Administration (the "NCUA"), which also charters and regulates federal credit unions. The deposits of federal credit unions are insured up to \$100,000 by the NCUA. Most state chartered credit unions are required to have NCUA deposit insurance also. Credit unions generally are subject to extensive regulation and supervision similar to that applicable to banks and savings institutions. Credit unions are specifically authorized to invest in deposits accounts at other financial institutions insured by the FDIC. 12 C.F.R. § 703.4(c).

Local credit unions provide a full range of financial services to their members, including savings, money market and checking accounts, certificates of deposit, and IRA's. They offer traditional personal loans, such as first and second home mortgage loans, automobile loans, credit cards and other secured and unsecured loans. They also provide such services as cashier's checks, travelers' checks, and electronic payments. Corporate credit unions provide services to local credit unions, including investment alternatives, liquidity services, and check clearing.

¹ All deposits in the same institution maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) are added together for purposes of FDIC insurance. Deposits maintained in different rights and capacities can be separately insured. 12 C.F.R. § 330.3(a). They are the same types of accounts as are offered by many banks and are commonly designated as "money market, NOW (negotiable order of withdrawal) and passbook savings accounts."

In short, credit unions of all types are clearly "financial institutions" and "institutional buyers." Joseph C. Long, a leading commentator on blue sky laws, has indicated that these terms should encompass credit unions. Long, BLUE SKY LAW (1996) at 5-44. In this respect it is significant to note that the SEC has made it clear that the term "accredited investor" in its Regulation D, 17 C.F.R. § 230.501(a)(1),² which is used to define a class of purchasers of securities who have such financial sophistication that the protection afforded by the securities registration requirements are not necessary for them, is interpreted to include credit unions. In the SEC's 1933 Act Release No. 6758 (March 3, 1988) (1988 SEC LEXIS 389), the SEC stated that the revisions to the regulation discussed therein "change the definition of accredited investor by including additional investors such as savings and loan associations, credit unions and broker-dealers." The SEC stated further that:

"The institutional investor category has been expanded to include savings and loan associations and similar institutions such as credit unions...[t]here does not appear to be a compelling reason to distinguish these institutions from banks, insurance companies or registered investment companies which are already defined to be accredited. Most of the states in their institutional investor exemptions already exempt securities offerings to these categories of investors [citing the Uniform Securities Act]."

In footnote 10 to the Release, the SEC noted that its staff interprets the phrase "similar institution" in Section 3(a)(5)(A) of the Securities Act of 1933 as encompassing credit unions insured by the NCUA, as the vast majority of credit unions are. Accordingly, the SEC has issued a number of no action letters in which credit unions are treated as eligible for the exemption from the requirement to register their securities available under Section 3(a)(5)(A) of the Securities Act of 1933 for securities issued by a "savings and loan association, building and loan association, cooperative bank, homestead association or similar institution" (emphasis added).³ Therefore, we believe that credit unions should be regarded as other financial

² 12 C.F.R. § 230.501(a)(1) includes among accredited investors "any savings and loan associations or other institution as defined in Section 3(a)(5)(A) of the Act." Section 3(a)(5)(A) of the Act includes among the issuers whose securities are exempt from registration "a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having jurisdiction over any such institution...."

³ See letters concerning U.S. Central Credit Union (avail. January 21, 1993), Automatic Employees Federal Credit Union (avail. February 12, 1979), Oregon Telco Credit Union (avail. (continued...))

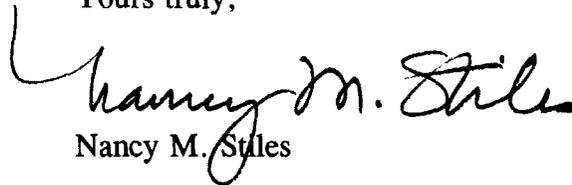
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institutions or institutional buyers under UTAH CODE ANN. § 61-1-14(2)(h) and PCIL should be able to sell depository products to credit unions in Utah without registering the depository products as securities.

Conclusion

For the reasons stated above, we request your concurrence with our continuing reliance on your 1989 letter interpreting UTAH CODE ANN. § 61-1-14(1)(c), with our interpretation of UTAH CODE ANN. § 61-1-14(2)(h) and your recommendation of no enforcement action with respect to PCIL's offer and sale of depository products to the general public in Utah as described above and to credit unions in Utah. We would be happy to provide any further information upon request.

Yours truly,


Nancy M. Stiles

cc: Lyle C. Lodwick
Tracy Elliott
Dave M. Muchnikoff

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³(...continued)

April 3, 1978) and Idaho Central Credit Union (avail. February 14, 1977).