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August 18, 2004

Dan W. Egan
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One Utah Center – Suite 600
201 South Main Street
Salt Lake City, UT 84111-2221

Re: Interpretive Opinion Request Dated 07/15/04
File #: B00467480

Dear Mr. Egan:

This letter is in response to your request for an interpretive opinion from the Utah Division of Securities (“Division”). You asked the Division to opine whether a Utah-chartered industrial bank will qualify as a “bank” for purposes of applying the exclusion from the definition of broker-dealer found in section 61-1-13(3)(c) of the Utah Uniform Securities Act (“Act”).¹

Section 61-1-13(3) of the Act states,

“Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. “Broker-dealer” does not include:

...

- (c) a bank, savings institution, or trust company;

The Utah Department of Financial Institutions (“DFI”) is the agency tasked with exercising regulatory oversight over “depository institutions” operating within the State. See Utah Code Ann. §7-1-501(2)(a). Industrial banks (“IBs”) are included among the specifically enumerated institutions. See Utah Code Ann. §7-1-103(8).

Under the existing statutory framework, IBs are subject to the same regulatory oversight as a Utah-chartered commercial bank. See *e.g.* Utah Code Ann. §7-1-207 (DFI to maintain a dedicated IB examination staff) and §7-8-

¹ In response to the passing of Senate Bill 176 in the 2004 General Session of the Utah Legislature, the Department of Financial Institutions has changed all references to “Industrial Loan Corporations” (ILCs) to “Industrial Banks.”

3(4)(B) (IBs must maintain FDIC insurance on deposit accounts). Under current DFI policy, annual safety and soundness examinations are performed on all IBs, usually in consort with FDIC examiners.

In light of the existence of this alternative and comprehensive regulatory scheme, it is the position of the Division that the exclusion found at §61-1-13(3)(c) of the Act should be understood to include Utah-chartered industrial banks.

You have also requested guidance as to whether the employees of the IB who effect securities transactions on its behalf will be regarded as “agents” under the Act. “Agent” is defined in §61-1-13(2) to include “any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.”

Under this definition, an individual must represent either a broker-dealer or issuer in order to be regarded as an agent. As established above, IBs are specifically excluded from the definition of broker-dealer. If the IB likewise does not constitute the “issuer” of the securities in question under §61-1-13(17) of the Act, then licensing of its employees as agents pursuant to §61-1-4 of the Act will not be required.

Please note that this opinion relates only to the circumstances described above. Because this opinion is based on representations made to the Division, it should be further noted that any different facts or conditions of a material nature might require a different conclusion.

Very truly yours,

UTAH DIVISION OF SECURITIES



Benjamin N. Johnson
Director of Corporate Finance