



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

March 9, 2016

Ethan L. Silver
Carter Ledyard & Milburn LLP
2 Wall St
New York, NY 10005-2072

Re: [REDACTED] -- No-Action Request

Dear Mr. Silver

We have reviewed the request for a no-action position dated February 25, 2016, on behalf of [REDACTED] (the "Client"), a New York State chartered bank with no place of business in Idaho. The Client represents that it will soon withdraw from NYSE and FINRA membership. The Client will continue to conduct securities-related business, relying on Section 3(a)(4)(B) of the Securities Exchange Act of 1934 and Regulation R which exempt banks that engage in limited securities activities from the requirement to register as a broker-dealer under federal law.

Under Section 102(4)(c) of the Idaho Uniform Securities Act (2004) (the "IUSA") a bank is excluded from the definition of a broker-dealer when its securities related activities are limited to those activities specified in certain sub-sections of Sections 3(a)(4)(B) and 3(a)(5) of the Securities Exchange Act of 1934. However, the Client also engages in one additional securities-related activity in Idaho – Non-Custodial Lending Transactions. The Client represents that it is exempt from broker-dealer registration under federal Regulation R when conducting this activity. Unfortunately, this additional securities-related activity would technically require the Client to register in Idaho as a broker-dealer.

The Client also represents that it would only conduct Non-Custodial Lending Transactions in Idaho with institutional investors, an activity which exempts the Client from registration as a broker-dealer in Idaho under Section 401(b)(1)(C) of the IUSA.

The Department agrees to take no enforcement action against the Client as an unregistered broker-dealer if the Client limits its activities in Idaho to those enumerated in Section 102(4)(c) of the IUSA, and Section 247.772 of Regulation R with Idaho institutional investors.

The Department's position is based on the written facts presented your letter. If those facts or circumstances change, are inaccurate, or incomplete our position may change.

Sincerely,

Kurt Merritt
Securities Analyst
Idaho Department of Finance

SECURITIES BUREAU
Bureau Chief – Jim Burns
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February 25, 2016

VIA E-MAIL

Patty Highley
Idaho Department of Finance
800 Park Blvd. Suite 200
Boise, Idaho 83712

Re: Broker-Dealer Bank Registration Exemptions

Ms. Highley:

We are writing on behalf of our client, [REDACTED] (the "Client"), to request that your office issue a no-action letter based on the Background and Discussion below.

Background and Discussion

We initially spoke with Kurt Merritt on January 28, 2016 (the "Conversation") regarding our questions relating to applicable broker-dealer registration exemptions for banks under Idaho's Securities Act ("Idaho's Act"). During the Conversation, we discussed that our client, which is a New York State chartered bank with no place of business in Idaho (the "Client"), plans to withdraw from NYSE membership, and will therefore also be required to withdraw from FINRA membership. Going forward, the Client will rely on Section 3(a)(4)(B) of the Securities Exchange Act of 1934 (the "Exchange Act") and the regulations promulgated thereunder ("Regulation R"), which exempt banks that engage in certain limited securities activities from the requirement to register as a broker-dealer under federal law. Accordingly, after withdrawing from NYSE and FINRA, the Client will limit its securities-related activities to those specified in Section 3(a)(4)(B) of the Exchange Act and Regulation R, and will not engage in any traditional securities brokerage activities, such as trading, underwriting or investment banking.

Unfortunately, from a technical perspective, the Client's reliance on the exemptions from federal registration does not necessarily exempt it from registration in Idaho because § 30-14-102 of Idaho's Act, while explicitly recognizing the exemptions under the Exchange Act, does not appear to include the exemptions under Regulation R. Nevertheless, we can assure you that our Client intends to engage in only one additional securities-related activity in Idaho beyond those limited activities that exclude a bank from the definition of a broker-dealer under Idaho's Act. This one activity, Non-Custodial Securities Lending Transactions, which is federally exempt under Regulation R, will be limited to institutional investors in accordance with the

exemption from registration under § 30-14-401(b)(1)(C) of Idaho's Act.¹ The aforementioned sections of Idaho's Act, if read together, account for all of the Client's securities-related activities in Idaho.

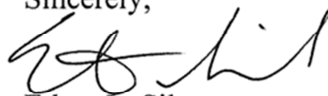
Also, it is noteworthy that § 30-14-103 of Idaho's Act demonstrates an intent to mirror the federal exemptions under the Exchange Act. Pursuant to § 30-14-103, references to federal statutes in Idaho's Act, including references to the Exchange Act, mean "those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter, or as later amended." However, since Regulation R was implemented in 2007, shortly after the enactment of Idaho's Act in 2004, § 30-14-103 of Idaho's Act explicitly recognizes the exemptions under the Exchange Act but does not appear to include the exempt activities under Regulation R. From a timing perspective, if Idaho's Act had been enacted or amended shortly after Regulation R was implemented, the Client would clearly be exempt from registration as a broker-dealer in your state. Therefore, to uphold the intent of Idaho's Act, the Client should not be required to register if it limits its activities to those federally exempt activities listed in § 30-14-103 of Idaho's Act and one Regulation R activity, Non-Custodial Securities Lending Transactions that will be limited to institutional investors.

Accordingly, we respectfully request that your office agree not to take any enforcement action against the Client if it does not register as a broker-dealer in your state and limits its activities to those described herein.

To assist with your review and to offer insight into why other Uniform Securities Act states have agreed with our position, we've attached responses from Iowa, Wisconsin, U.S. Virgin Islands and Vermont as **Exhibit A** to this letter.

Thank you for your time and consideration. If you have any questions regarding this letter or if you require any further information, please do not hesitate to contact me at 212.238.8687 or silver@clm.com.

Sincerely,



Ethan L. Silver

¹ This is not an attempt to evade any provisions of the securities laws as the Client is creating an appropriately registered broker-dealer (the "Subsidiary"), to perform the limited set of activities that fall outside of activities it can conduct under its bank license and bank exemptions. The Client will use this wholly-owned subsidiary for single product sales of registered and private funds on behalf of the Client, activities that are not otherwise exempt from federal registration under Section 3(a)(4)(B) of the Exchange Act or Regulation R. The Subsidiary will register with the SEC as a broker-dealer and apply for FINRA membership. The Subsidiary will also register with Idaho as a broker-dealer.

Exhibit A

Confirmation Letter from Iowa, Wisconsin, U.S. Virgin Islands, Vermont



STATE OF IOWA

TERRY E. BRANSTAD
GOVERNOR

NICK GERHART
COMMISSIONER OF INSURANCE

KIM REYNOLDS
LT. GOVERNOR

February 17, 2016

Ethan Silver, Partner
Carter Ledyard & Milburn LLP

Dear Mr. Silver:

Your client is a New York state chartered bank (the Bank). The Bank maintains that the Bank is exempted from federal broker-dealer registration requirements if the Bank limits the Bank's activities to those permitted under Section 3(a)(4)(B) of the Securities Exchange Act of 1934 and federal Regulation R.

The Bank requests the Securities and Regulated Industries Bureau, Iowa Insurance Division take no enforcement action against the Bank for not registering as a broker-dealer if the Bank limits its activities in the state of Iowa. The Bank agrees to limit the Bank's activities to those permitted under Section 3(a)(4)(B) and as a "Securities Lending Agent" under Regulation R. Specifically, the Bank wishes to engage in "Securities Lending," a strategy in which investors make short-term loans of their securities to generate incremental revenues from their portfolios. In this capacity the Bank may engage in the following services:

- Selecting and negotiating with a borrower and executing, or directing the execution of the loan with the borrowers;
- Receiving, delivering, or directing the receipt or delivery of loaned securities and collateral;
- Receiving, delivering, or directing the receipt or delivery of collateral;
- Providing mark-to-market, corporate action, recordkeeping or other services incidental to the administration of the securities lending activity;
- Investing, or directing the investment of, cash collateral; or
- Indemnifying the lender of securities with respect to various matters.

As an additional basis for exemption from the broker-dealer registration requirements under Iowa Code section 502.401(1), the Bank will limit its activities to clients who are "institutional investors" as defined under Iowa Code subsection 502.102(11). No individuals are included in the definition of "institutional investor."

The Iowa Securities and Regulated Industries Bureau agrees to take no enforcement action against the Bank as an unregistered broker-dealer if the Bank limits its activities as set forth above. Any action outside the listed activities or any change in the facts as set forth will void this letter.

Sincerely,

A handwritten signature in cursive script that reads "Gary L. Marquett".

Gary L. Marquett, Assistant Bureau Chief
Securities and Regulated Industries Bureau



State of Wisconsin
Department of Financial Institutions

Scott Walker, **Governor**

Ray Allen, **Secretary**

February 9, 2016

VIA E-MAIL

Ethan L. Silver
Anup Khatri
Carter Ledyard & Milburn LLP
2 Wall Street
New York, NY 10005-2072

Re: Broker-Dealer Registration Exemptions for Banks

Dear Messrs. Silver and Khatri:

This is in response to your letter dated January 26, 2016, regarding the application of the Wisconsin Uniform Securities Law to exempt a bank from broker dealer registration if its activities are limited.

We agree with your reading of the Wisconsin statutes as follows: Per §551.102(4)(c), a bank is excluded from the definition of broker-dealer if its activities are limited to those specified in Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act. If the bank is engaged in an additional activity that is outside of those sections of the Exchange Act, but that activity is limited to institutional investors, then the bank is exempt from registration as a broker-dealer under §551.401(2)(c).

Therefore, based upon your representations regarding the bank's activities, the bank would not be required to register as a broker dealer.

Please feel free to contact us with any further questions.

Sincerely,

Deborah J. Fabritz
Director
Professional Registration & Compliance Bureau
Division of Securities

cc. Charles Benson, Examiner



**DIVISION OF
BANKING AND INSURANCE**

**THE UNITED STATES VIRGIN ISLANDS
OFFICE OF THE LIEUTENANT GOVERNOR**

February 24, 2016

Ethan L. Silver, Partner
Carter Ledyard & Milburn LLP
2 Wall Street
New York, NY 10005-2072

Re: Broker-Dealer Registration Exemptions for Banks

Dear Mr. Silver:

By way of your correspondence of February 19, 2016, you have requested confirmation that your client, a Bank, is exempt from the territory's statutory registration requirements for a broker-dealer. To that end, the Bank will act in accordance with the exemptions set forth in Section 3(a)(4)(B) of the Securities Exchange Act of 1934 (the "Exchange Act"), which generally comport with the broker-dealer exemptions delineated in Section 602(4)(C) of the Virgin Islands Uniform Securities Act (the "Uniform Act").

However, the Bank will also engage in Non-Custodial Securities Lending that, although deemed exempt under Regulation R of the Exchange Act, is not considered an exempt activity under Section 602 of the territory's Uniform Act. Nonetheless, because this specific lending activity will be limited to institutional investors, the Bank will be exempt from registration as a broker-dealer pursuant to Section 631(b)(1)(C) of the Uniform Act.

In brief, since the bank's securities-related activities in the territory will come within the ambit of both Section 602(4)(C) and Section 631(b)(1)(C) of the Uniform Act, these two statutory provisions, when read in concert with each other, will exempt the Bank from registration as a broker-dealer in the Virgin Islands.

Finally, do note that any facts or circumstances that deviate from the representations set forth in your February 19th correspondence could result in a different opinion by this office.

Sincerely,

A handwritten signature in cursive script, reading "Deverita Sturdivant".

Deverita Sturdivant
Chief of Securities Registration



State of Vermont
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101

For consumer assistance:
[Banking] 888-568-4547
[Insurance] 800-964-1784
[Securities] 877-550-3907
www.dfr.vermont.gov

January 25, 2016

Anup Khatri
Carter Ledyard & Milburn LLP

Dear Anup Khatri,

The Department of Financial Regulation (Securities Division) has reviewed your request dated January 15, 2016. Based on the information provided to us on January 15, 2016, we are confirming that your client's bank is exempt from registration as a broker-dealer in VT.

Sincerely,

Amanda Smith
Registration & Consumer Affairs Administrator

