

*Statute
File*

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EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
Office: (602) 542-4242
FAX: (602) 542-3583

May 9, 1991

44-1801(19)

Mr. Kenneth V. Hallett, Esq.
Quarles & Brady
411 E. Wisconsin Ave.
Milwaukee WI 53202-4497

RE: M&I Brokerage Services, Inc. No-Action Request,
A.R.S. § 44-1801(19)

Dear Mr. Hallett:

On the basis of the facts set forth in your letter of January 30, 1991 and subsequent communications with your firm, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter, subject to the following condition. The Bank must obtain a signed new account card from every customer whom it assists in opening a brokerage account. The new account card must contain a conspicuous disclosure stating that "Any securities offered by M&I Brokerage Services, Inc. are not savings accounts or deposits and are not insured by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund or any other government agency."

As this position is premised upon the facts set forth in your letter, it should not be relied upon for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

The participation of banks in offering and selling securities is a rapidly evolving area of the law. Therefore, there may come a time in the future when the Division would take a different position on similar facts, or withdraw this no action position for further transactions. This letter should not be regarded as precedent for any future positions to be taken by the Division on similar facts.

Mr. Kenneth V. Hallett
May 8, 1991
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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,



DEE RIDDELL HARRIS
Director of Securities

DRH:SW:ww

Attachment

cc: Richard P. Carney

411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497
414/277-5000
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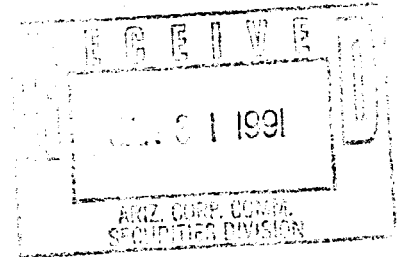
Attorneys at Law in
Milwaukee and Madison, Wisconsin
West Palm Beach and Naples, Florida
Phoenix, Arizona

Quarles & Brady

January 30, 1991

FEDERAL EXPRESS

Sandra Forbes, Esq.
Law and Policy Division
Arizona Corporation Commission
1200 W. Washington, 2nd Fl.
Phoenix, AZ 85007



Re: Request for "No-Action" Letter Regarding
Clerical Services Performed by Bank Employees

Dear Ms. Forbes:

On behalf of M&I Brokerage Services, Inc. (a/k/a Automated Brokerage Services), a broker-dealer registered in Arizona ("M&I Brokerage"), we hereby request that the Arizona staff confirm that it will take a "no-action" position with respect to the activities of certain employees of M&I Thunderbird Bank, an Arizona chartered bank (the "Bank") who are not registered as salesmen in Arizona but who may perform limited administrative and clerical functions to assist prospective M&I Brokerage customers in opening accounts (the "Employees").

Background

M&I Brokerage has been licensed as a broker-dealer in Arizona since November 16, 1987. The firm's principal office is located in Milwaukee, Wisconsin and it has no branch offices in Arizona. M&I Brokerage is an affiliate of the Bank, which is located in Phoenix, Arizona. M&I Brokerage would like to have Employees present new account documents to prospective customers and assist new customers in completing those documents. These services will be performed on a part-time basis solely incidental to the duties the Employee otherwise performs for the Bank.

We have reviewed the definition of "salesman" in Sec. 44-1801 of the Securities Act of Arizona (the "Act") and do not believe that the Employee's functions would cause them to fall within this definition. We therefore ask the staff to take a "no action" position if the Employees provide the services described below without being registered as salesmen.

Scope of Services

Employees at the Bank will inform Bank customers about M&I Brokerage's services and deliver to those prospective customers the documents necessary to open an account. The Employees may assist a customer in completing the new account forms and forwarding them to M&I Brokerage, however when doing so, no Employee will engage in any of the following activities:

1. Recommend the type of account that a customer should open. The kinds of available accounts and services will be described in M&I Brokerage's account opening packet.

2. Recommend the purchase or sale of any security.

3. Provide any market or account advice to customers after the account is opened, such as providing price quotations or other market information. Only registered representatives will do so.

4. Receive or forward to M&I Brokerage any customer funds or certificates to settle securities transactions. Customers will be informed to deposit funds directly to their settlement account at the Bank and forward certificates directly to M&I Brokerage in Milwaukee, Wisconsin.

5. Correspond with a customer about new investment opportunities after the account is opened, such as mailing promotional brochures about new investments. All such solicitations will originate from the firm's principal office.

M&I Brokerage will train each Employee and provide each with a procedures manual explaining the limits of allowable activities. Officers of the Bank and other employees will also be informed about the limits of permissible activities. All technical questions will be directed to a representative of M&I Brokerage who is fully registered with the NASD and Arizona. An NASD principal registered in Arizona will approve all account opening documents submitted by each customer.

Sandra Forbes, Esq.
January 30, 1991
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To place a securities transaction order or obtain information which Employees may not provide, a customer will be instructed to call M&I Brokerage directly by using a designated telephone number. Neither the Bank nor any Employee will have any role in handling transaction orders. M&I Brokerage will only accept transaction orders from customers, not through Employees or the Bank.

In almost all cases, the customer will be required to open a bank account with the Bank to settle the customer's security transaction orders. Thus, the account opening functions performed for M&I Brokerage compliment the opening of the bank account and require about the same level of technical expertise.

The Definition of "Salesman"

The term "salesman" under Sec. 44-1801.19 of the Act is defined to mean "an individual, other than a dealer, employed, appointed or authorized by a dealer to sell securities." M&I Brokerage will not employ, appoint or authorize any individual at the Bank to sell securities. It will authorize individuals to assist customers in completing the paperwork necessary to open an account. We believe these limited activities do not rise to the level of being a "salesman" subject to registration.

Unlike fully-registered representatives, Employees will not provide services typically performed by salesmen, e.g., securities advice, order execution and follow-up information. Furthermore, Employees will not receive any direct or indirect compensation for performing these services, therefore no inducement will exist for Employees to exceed the limits of the limited duties they are authorized to perform. M&I Brokerage will pay the Bank (but not to the Employees) a portion of the commission it receives from customer accounts originating at the Bank to reimburse the Bank for the services performed by the Employees.

Based upon the types of ministerial services to be provided by Employees, the facts that each Employee will be given special instruction and not receive any compensation for these services, we ask your confirmation that the staff will take a "no-action" position if Employees engage in the activities described above without being registered as salesmen in Arizona.

Sandra Forbes, Esq.
January 30, 1991
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(On January 16, 1991, Richard Carney of our Madison office spoke briefly with Mr. Thomas Woods, the duty attorney of the day, and inquired informally whether he felt the definition of "salesman" would apply under the facts outlined above. Mr. Woods stated he did not believe the definition would be applicable but suggested that we should prepare a request for a no-action letter to receive more formal advice on the question.)

Thank you for your consideration of this request. If you have any questions, you may call (collect) Richard Carney at (608) 283-2457 or me at (414) 277-5345. A check for \$200 to cover the examination fee for this request is enclosed.

Very truly yours,

QUARLES & BRADY



Kenneth V. Hallett

240/sw

63-503-307-2

l\forbes

cc: Thomas Woods, Esq.
Arizona Corporation Commission
Mr. William K. Curtis
Vice President, M&I Brokerage Services, Inc.
Ms. Cheryl Clark
Compliance Officer, M&I Brokerage Services, Inc.
Mr. Richard P. Carney
Quarles & Brady