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ARIZONA CORPORATION COMMISSION

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EXECUTIVE SECRETARY

SECURITIES DIVISION  
1300 West Washington, Third Floor  
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November 26, 1996

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

RE: Pacific Crest Investment & Loan  
A.R.S. § 44-1843(A)(2)

Dear Ms. Stiles:

On the basis of the facts set forth in your letter of November 1, 1996, 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. The Division concurs with your opinion that the deposit products are exempt from registration pursuant to A.R.S. §44-1843(A)(2), as securities "issued by a state bank . . . the business of which is supervised and regulated by an agency of . . . the United States." In addition, as a result of that exemption, neither the salesman registration provisions of A.R.S. §44-1842 nor the advertising limitations of A.A.C. R14-4-103 are applicable to the offer or sale of such securities.

As this position is premised upon the facts set forth in your letter, it should not be relied on 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.

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,

A handwritten signature in cursive script, reading "Victor Rodarte".

VICTOR RODARTE  
Chief Deputy Director of Securities

VR:sjd  
Attachment

LAW OFFICES  
SILVER, FREEDMAN & TAFF, L.L.P.

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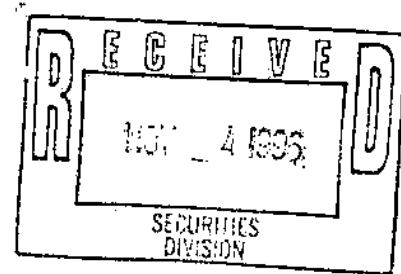
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\*NOT ADMITTED IN D.C.

November 1, 1996

Dee R. Harris, Director  
Corporation Commission, Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007

Re: Pacific Crest Investment & Loan



Dear Ms. Harris:

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 Arizona of certificates of deposit and depository instruments as described below to the general public. Enclosed is a check for \$200 payable to the Securities Division, Arizona Corporation Commission.

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

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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 Thrift & Loan ("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.

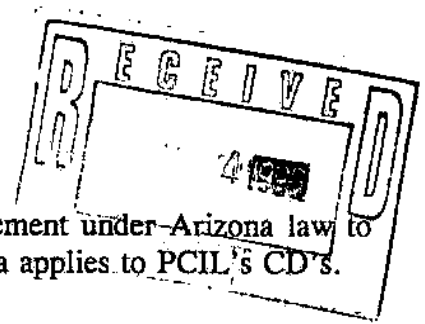
### The Depository Instruments

PCIL proposes to offer and sell to the general public in Arizona 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(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 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.<sup>1</sup> 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.

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<sup>1</sup> 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."

## Exemption From Registration Under Arizona Law



We believe that the following exemption from the requirement under Arizona law to register securities offered and sold to the general public in Arizona applies to PCIL's CD's.

ARIZ. REV. STAT. § 44-1843.A.2 exempts from registration any security issued by a state bank the business of which is supervised and regulated by an agency of Arizona or of the United States. We believe that PCIL should be considered a "bank" for purposes of this exemption. As noted above, the SEC has determined that PCIL is eligible for the exemption available to banks under the Securities Act of 1933. PCIL is a "state bank" for purposes of deposit insurance and regulation under the Federal Deposit Insurance Act, and is supervised thereunder by the FDIC in addition to being supervised by the California Commissioner. The extent of the FDIC's supervision of PCIL is the same as for state banks generally. The California Commissioner's supervision of PCIL is similar to the supervision to which banks generally are subject. PCIL's capital and investment authority are subject to conditions and restrictions under state law (as well as under the Federal Deposit Insurance Act). PCIL is also subject to requirements of the Board of Governors of the Federal Reserve System which apply to banks generally, such as reserve requirements, truth in savings disclosures under 12 C.F.R. Part 304, *etc.* The FDIC, which is the primary federal banking regulatory of PCIL, is an agency or corporate or other instrumentality of the United States created under Section 1 of the Federal Deposit Insurance Act, 12 U.S.C. § 1811.<sup>2</sup>

In the past, the Arizona Securities Division has treated a California industrial loan association as a bank supervised and regulated by an agency of the United States. See, the letter issued by the Arizona Corporation Commission, dated March 30, 1994, Ariz. Sec. LEXIS 17 (copy attached as Exhibit B), concurring that investment certificates (*i.e.*, certificates of deposit) issued by California chartered industrial loan companies are exempt under ARIZ. REV. STAT. § 44-1843.A.2. as securities issued by a state bank the business of which is supervised and regulated by an agency of the United States.

We note that other states which have exemption provisions virtually identical to ARIZ. REV. STAT. § 44.1843.A.2. treat an FDIC insured industrial loan company as a "bank" or "savings institution" for purposes of those exemptions. See, for example, the no action letter dated August 22, 1994, issued by the New Jersey Bureau of Securities and published at CCH BLUE SKY LAW REPORTS ¶ 40,645 (copy attached as Exhibit C), adopting the view that certificates of deposit issued by a Utah industrial loan corporation should be treated as securities issued by and representing a debt of a bank organized and supervised under laws of a state, and therefore exempt from registration under N.J.S.A. 49:3-50(a)(3).

Assuming that our view concerning the exemption for PCIL's depository products from the securities registration requirement is correct, then it is also our view that PCIL's employees

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<sup>2</sup> C. Long, BLUE SKY LAW (1993) at 4-17 to 4-18.

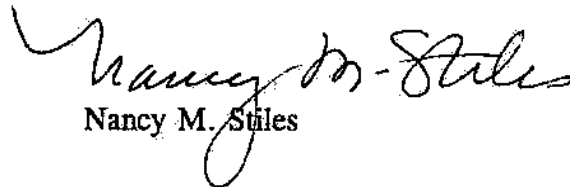
offering and selling such products would not be subject to the registration requirement under ARIZ. REV. STAT. § 44-1842.

Finally, we note that the rule of the Arizona Securities Division set forth in Sec. R14-4-103.C governs "any advertising, communications, prospectus, or sales literature of any kind" and, together with Sec. R14-4-103.D., prescribes certain requirements concerning such advertising and other materials. It is our view that these rules were intended to apply to offers made by a prospectus and related material, but not to the offer and sale of depository products of PCIL as described above. In this regard, we note that advertising of the rates for any depository product of PCIL are subject to the requirements of the Federal Reserve Board's Regulation DD on truth-in-savings.

### Conclusion

For the reasons stated above, we request your concurrence with our views concerning exemptions from registration requirements under Arizona law and the nonapplicability of Sec. R14-4-103.C. and D., and your recommendation of no enforcement action with respect to PCIL's offer and sale of depository products to the general public in Arizona as described above. 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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