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ARIZONA CORPORATION COMMISSION

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

Paul T. Clark, Esq.  
Seward & Kissel  
1200 G Street, N.W.  
Washington, D.C. 20005

RE: Smith Barney, Inc.  
File No. S-0051606-NOAC  
A.R.S. § 1843(A)(2)

Dear Mr. Clark:

On the basis of the facts set forth in your letters of August 12 and 23, 1996, and in reliance upon your opinion as counsel, the Securities Division concurs with your opinion that state-licensed United States branches of foreign banks that receive substantially equivalent supervision and regulation as state-chartered domestic banks should be treated as "state banks" for purposes of A.R.S. § 44-1843(A)(2).

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 letters. 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 black ink, appearing to read "Dee Ridgell Harris".

DEE RIDDELL HARRIS  
Director of Securities

DRH:ctf  
Attachment

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BRUCE D. SENZEL  
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ANTHONY R. MANSFIELD  
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August 12, 1996

\* ADMITTED IN DISTRICT OF COLUMBIA

Leslie R. Block, Esq.  
Assistant General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street  
Third Floor  
Phoenix, Arizona 85007

Dear Ms. Block:

On behalf of Smith Barney, Inc. ("Smith Barney"), a broker-dealer registered under Section 15(a) of the Securities Exchange Act of 1934, we respectfully request that you confirm in writing that your office would treat federally insured certificates of deposit ("CDs") issued by certain U.S. branches of foreign banks (the "U.S. Branches") as exempt from registration under Section 44-1841 of the Arizona Revised Statutes.<sup>1</sup> The U.S. Branches are supervised and regulated by the Federal Deposit Insurance Corporation (the "FDIC") and are licensed either by the State of Illinois or the State of New York. The activities of the U.S. Branches, including the issuance of securities,

1. Although certificates of deposit are not securities for purposes of the federal securities laws (Marine Bank v. Weaver, 455 U.S. 551 (1982)), certificate of deposit programs conducted by registered broker-dealers generally are designed to comport with exemptions from state securities registration requirements available for obligations of depository institutions. Please note that submission of this request should not be construed as an admission that the CDs are securities as defined in Section 2(1) of the Securities Act of 1933 and Section 44-1801(22) of the Arizona Revised Statutes.

are regulated and supervised by the States of Illinois and New York in the same manner as the activities of state-licensed domestic banks are regulated and supervised by those states. Smith Barney proposes to offer the CDs to residents of Arizona in amounts not exceeding \$100,000, including principal and interest, from any single U.S. Branch.

Section 44-1843(A)(2) of the Arizona Revised Statutes provides an exemption from registration for securities issued or guaranteed by a "state bank ... the business of which is supervised and regulated by an agency ... of the United States." Treating a state-licensed U.S. branch of a foreign bank as a "state bank ... the business of which is supervised and regulated by an agency ... of the United States" is consistent with the principle of "national treatment" and the treatment given such institutions by the Securities and Exchange Commission (the "SEC") and by State bank regulators, including the bank regulators of the States of Illinois and New York, as more fully explained below.

#### The Principle of National Treatment

The International Banking Act of 1978 (the "IBA"), the legal framework which governs the U.S. operations of foreign banks, incorporates, as one of its two principal policy objectives, the objective of providing "to the extent possible or appropriate equal treatment for foreign and domestic banks operating in the United States." H.R. Rep. No. 910, 95th Cong. 2d Sess. 5 (1978). In its extensive review of the legislative history of the IBA, the United States Court of Appeals for the District of Columbia Circuit found such history "replete with references to Congress' intent to accord foreign banks national treatment, under which 'foreign enterprises ... are treated as competitive equals with their domestic counterparts.'" (citation omitted). Conference of State Bank Supervisors, et. al. v. Conover, 715 F.2d 604, 615 (D.C. Cir. 1983). The court found that "establishment of a foreign bank's initial home state office is analogous to establishment of a domestic bank's principal office." Id. at 616-617. Treatment of a state-licensed U.S. branch of a foreign bank as a bank organized and supervised under the laws of such state would be consistent with the principle of national treatment.

The Securities and Exchange Commission

The SEC has given effect to the principle of national treatment in its implementation of Section 3(a)(2) of the Securities Act of 1933. 15 U.S.C. §77c(a)(2). That provision exempts from registration "any security issued or guaranteed by any bank." The term "bank" includes "any banking institution organized under the laws of any State ... the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official." *Id.* For purposes of the Section 3(a)(2) exemption, the SEC "deems a branch or agency of a foreign bank located in the United States to be a [bank], provided that the nature and extent of federal and/or state regulation and supervision of the particular branch or agency is substantially equivalent to that applicable to federal or state chartered domestic banks doing business in the same jurisdiction." Release No. 33-6661 (September 23, 1986). In adopting this interpretation, the SEC formalized its no-action positions, which it characterized as "intended to implement the 'principle of national treatment,' that foreign and domestic banks should have the same privileges and be subject to the same rules in this country." *Id.*

Regulation by Agency of the United States

The deposits of the U.S. Branches are insured by the FDIC, an agency of the United States created pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1811, et seq.). The U.S. Branches are, therefore, subject to extensive supervision and regulation by an "agency of the United States." Your office has on a prior occasion, with respect to FDIC-insured CDs issued by industrial loan companies, agreed that the FDIC is an agency of the United States. (No-Action Letter, DEE RIDDELL HARRIS, March 30, 1994, BLUE SKY L.REP. (CCH) Para. 9687.)

State Bank Regulators

To assist in making a determination that the regulation and supervision of such institutions is "substantially equivalent" to that of its domestic counterparts, certain state banking departments have issued letters to that effect with respect to the institutions under their supervision. We have enclosed copies of such letters from the Illinois Commissioner of Banks and Trust

Leslie R. Block, Esq.

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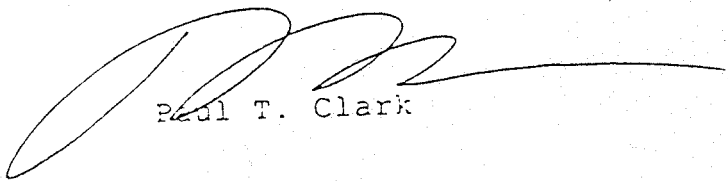
August 12, 1996

Companies (May 24, 1996) and the State of New York Banking Department (October 28, 1991).

Based on the above, we ask that you confirm that your office would treat CDs issued by FDIC-insured U.S. branches of foreign banks, licensed either by the State of Illinois or by the State of New York, as exempt from registration pursuant to Section 44-1843(A)(2) of the Arizona Revised Statutes. Enclosed please find our check in the sum of \$200.00.

Should you wish to discuss this matter further, please feel free to call me.

Very truly yours,



Paul T. Clark

PTC:tv  
Enclosure  
01071014.229

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August 23, 1996

\*ADMITTED IN DISTRICT OF COLUMBIA

Cheryl Farson, Esquire  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street  
Third Floor  
Phoenix, Arizona 85007

Dear Ms. Farson:

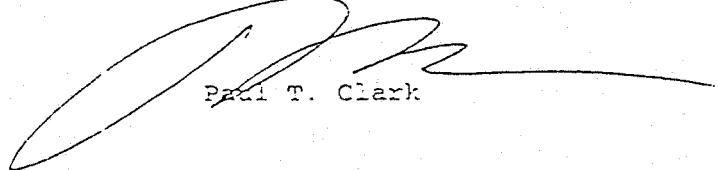
This will confirm, pursuant to our conversation yesterday, that my August 12, 1996 letter requesting interpretive advice on behalf of Smith Barney, Inc. ("Smith Barney") is limited to the narrow issue of the treatment of the U.S. Branches, as defined in the letter, for purposes of the exemption contained in Section 44-1843(A)(2) of the Arizona Revised Statutes and does not include any issues associated with Smith Barney's certificate of deposit program.

Additionally, as discussed, each of the U.S. Branches is insured and regulated by the Federal Deposit Insurance Corporation ("FDIC"). The FDIC, in conjunction with the Federal Reserve Board, regulates these branches to the same extent as domestically chartered banks.

You should be advised that a similar letter has been sent to the Securities Division by Alison M. Fuller of this firm on behalf of Oppenheimer Capital and is limited to the same issue as the Smith Barney letter. The statement in the foregoing paragraph applies as well.

Please call me if you have any questions.

Very truly yours,



Paul T. Clark

PTC:tv  
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