

## **INTERPRETIVE LETTER 91-12 (JUNE 10, 1991)**

### **Foreign bank representative office that solicits customers for loan, deposit and investment products, but does not accept deposits or make loans, is not engaged in the business of banking.**

I am writing in response to your letter dated \* regarding the ability of three affiliated entities--a national bank, a Delaware state-chartered bank and a nonbank affiliate (referred to collectively as the "Product Offerors")--to offer certain of their products to the customers of an affiliated corporation in Illinois which is licensed under the Illinois Residential Mortgage License Act of 1987 (Ill. Rev. Stat. 1989, ch. 17, par. 2321-1 et seq.) (the "Licensee"). From our telephone conversations, I understand that the national bank is licensed under the Foreign Bank Representative Office Act (Ill. Rev. Stat. 1989, ch. 17, par. 2851 et seq.), and you have advised the Delaware state-chartered bank that it must also be licensed under that Act.

In your letter, you stated that the products to be offered through the Licensee would include: (a) loan products, such as unsecured lines of credit, luxury automobile financing, and consumer credit cards (the "Loan Products"); (b) deposit products, such as certificates of deposit, checking and savings accounts, and money market accounts (the "Deposit Products"); and (c) investment products, such as VISTA mutual funds, private placements in limited partnerships, investment management services, and trust and estate services (the "Investment Products") (collectively the "Products"). The Licensee's employees would distribute Products literature, solicit applications for the Products, answer questions, help customers complete the applications and perform initial screening of the customers. All sales materials and displays will clearly state that the Products are being offered by, and are only available through, the Product Offerors. The completed applications and initial deposits, if any, would be delivered to the Product Offerors in one of the following ways:

1. The completed application and any initial deposit may be mailed directly by the customers to the Product Offerors using a pre-addressed postage prepaid envelope provided to the customer with the application; or
2. The pre-addressed postage prepaid envelope containing the completed application and the initial deposit, if any, may be given to the Licensee's employees for postal or courier service to the Product Offerors; or
3. The completed application may be given to the Licensee's employees to be sent via facsimile to the appropriate Product Offeror.

From your letter I also understand that all credit decisions, loan disbursements and acceptance of deposits will be made by the Product Offerors at their home offices outside of Illinois. No funds from loans will be disbursed by the Licensee, and the Licensee will not accept any cash or checks for deposit or give receipts therefor. However, in the event

the Licensee is acting as a mail courier to transmit applications and initial deposits, receipts for mailing purposes may be given to the customers.

Based on these facts, you asked me to confirm that the proposed arrangement between the Product Offerors and the Licensee would not constitute the accepting of deposits or the making of loans and thus will not result in the Product Offerors or the Licensee being engaged in the business of banking in Illinois. Before I respond, I must inform you that this Agency's opinion will be confined to the national bank and the Delaware state-chartered bank offering their products in this manner. The ability of the nonbank affiliate to offer the Investment Products across state lines does not present the same issues with respect to interstate branching and is thus not something this Agency is willing to address. Please be aware, however, that depending on the exact nature of the trust and estate services the nonbank affiliate plans to offer, compliance with the Corporate Fiduciary Act (Ill. Rev. Stat. 1989, ch. 17, par. 1551-1 et seq.) may be necessary. Section 4-4 of this Act prohibits a foreign corporate fiduciary from maintaining an office in Illinois.

With respect to the Delaware state-chartered bank and the national bank, however, if the Loan Products and Deposit Products are offered to the customers of the Licensee in the manner described, neither the Delaware state-chartered bank, the national bank nor the Licensee will be engaging in the business of banking in Illinois since the level of activity contemplated by the Delaware state-chartered bank, the national bank and the Licensee does not amount to the accepting of deposits or the making of loans.