

July 25, 2002

[redacted]

Re: Request for Confirmation of an Interpretation Under Section 106 of the Banking Code of 1965

Dear [redacted] :

This letter responds to your request for confirmation from the Pennsylvania Department of Banking (the "Department") that the Pennsylvania General Assembly intended to allow a national bank located in a state other than Pennsylvania, which has been granted fiduciary authority pursuant to 12 U.S.C. § 92a and which does not have a physical presence in Pennsylvania, to act as a fiduciary in Pennsylvania under 7 P.S. § 106(b) without having to meet the requirements set forth at 7 P.S. § 106(b)(i)-(iii).

As you are aware, on November 22, 2000, H.B. 2533 was signed into law as Pennsylvania Act 89 of 2000 and amended section 106(b) of the Pennsylvania Banking Code to allow out-of-state banking institutions and national banks that possess fiduciary powers, respectively, to engage in fiduciary activity in Pennsylvania either with or without a physical presence in Pennsylvania. With respect to national banks, the Pennsylvania General Assembly chose to recognize that national banks may engage in fiduciary activity in Pennsylvania consistent with Section 92a of the National Bank Act, 12 U.S.C. § 92a. *See* 7 P.S. § 106(b).

In determining the scope of the authority of a national bank under Section 92a of the National Bank Act, the Department refers to the regulations promulgated by the Office of the Comptroller of the Currency (the "OCC") at 12 C.F.R. § 9.7(a), which provide, in relevant part, that:

[p]ursuant to 12 U.S.C. § 92a and this section, a national bank may act in a fiduciary capacity in any state. If a national bank acts, or proposes to act, in a fiduciary capacity in a particular state, the bank may act in the following specific capacities:

- (1) Any of the eight fiduciary capacities expressly listed in 12 U.S.C. § 92a(a), unless the state prohibits its own state banks, trust companies, and other corporations that compete with national banks in that state from acting in that capacity; and
- (2) Any other fiduciary capacity the state permits for its own state banks, trust companies, or other corporations that compete with national banks in that state.

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12 U.S.C. § 9.7(a). Based upon the above OCC regulation, it is the Department's understanding that a national bank is permitted to act as a fiduciary in Pennsylvania pursuant to Section 92a of the National Bank Act in the *same capacities* that Pennsylvania state-chartered institutions with trust powers may act as fiduciary in Pennsylvania. The OCC regulations further state, in relevant part, that:

(2) *Other state laws.* Except for the state laws made applicable to national banks by virtue of 12 U.S.C. § 92a, state laws limiting or establishing preconditions on the exercise of fiduciary powers are not applicable to national banks.

12 C.F.R. § 9.7(e)(2). Accordingly, as the Pennsylvania General Assembly has chosen to recognize the ability of a national bank located in another state to engage in fiduciary activity in Pennsylvania consistent with Section 92a of the National Bank Act, and the regulations related thereto, Pennsylvania state law at 7 P.S. § 106(b)(i)-(iii) that limits or establishes preconditions on the exercise of fiduciary powers in Pennsylvania is not applicable to a national bank, which is authorized to act in a fiduciary capacity under 12 U.S.C. § 92a and which does not have a physical presence in Pennsylvania.

Please be advised that this letter is not intended to, and should not be construed to, address the applicability of any other Pennsylvania state law to a national bank other than the requirements set forth at 7 P.S. § 106(b)(i)-(iii). The Department's analysis is based upon the facts as stated in this letter. Any change in the facts could result in an amendment or reversal of the Department's position. This letter has been authorized by the appropriate Department personnel and constitutes a duly authorized statement of the Department's position regarding the issues discussed herein. This letter may not be relied upon or construed as constituting legal advice.

I trust this letter is responsive to your request.

Sincerely,

Laurie S. Kennedy
Deputy Chief Counsel

cc: James A. Acri, Trust Administrator