

(717) 783-8240

May 25, 1999

Dear [redacted]:

This responds to your letter of April 29, 1999, requesting permission from the Pennsylvania Department of Banking (the "Department") to allow [redacted] ("Bank") to offer employee benefit and compensation advisory services through a proposed Bank subsidiary, namely, the [redacted] (the "Service Corporation"). You enclosed a copy of Office of the Comptroller of the Currency ("OCC") Corporate Decision No. 98-51 (CCH ¶ 81-306, Nov. 30, 1998) (the "OCC Decision"), which permits national banks to use their excess human resources advisory capacity through a subsidiary to provide said services.

You further state that the Bank intends to hire a former employee, who would devote part of her time to human resource issues at the Bank and her remaining or excess capacity time to provide employee benefit and compensation advisory services to the Bank's small business customers through the Service Corporation on a fee-for-services basis. The Bank employee through the Service Corporation would not be providing any career counseling services to Bank customers.

Upon review of your request and enclosed materials, and in order to maintain competitiveness with national banks pursuant to the mandate in Section 103(a)(v) of the Banking Code of 1965 (the "Banking Code"), 7 P.S. § 103(a)(v), the Department's position is that the offering of human resources services by Bank would be permitted as an activity incidental to banking business pursuant to section 315(i) of the Banking Code, 7 P.S. § 315(i), subject to the guidelines promulgated by the OCC in the OCC Decision, a copy of which is enclosed with this letter.

More specifically, the employee benefit and compensation advisory services offered by the Service Corporation to its small business customers is permissible provided that the offering of human resource consulting services<sup>1</sup> constitutes no more than 10% of the total package of employment benefit and compensation advisory services offered as a whole to small business customers.

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<sup>1</sup> According to the OCC Decision, human resource consulting services include "assessing clients' training and development needs, auditing management policies and procedures, and developing internal training programs to inform employees about the types of benefits that are available to them." OCC Decision, (CCH ¶ 81-306, Nov. 30, 1998).

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According to the Department's records, the Bank has not received approval from the Department to establish the Service Corporation pursuant to section 203(d) of the Banking Code, 7 P.S. § 203(d). The Bank is therefore required to separately obtain prior Department approval to establish the Service Corporation before engaging in any employment benefit and compensation advisory services through the proposed Service Corporation.

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 states the Department's position regarding the issues discussed herein and may not be relied upon or construed as constituting legal advice.

Please contact me if you have any further questions regarding this matter.

Sincerely,

Richard S. DeMartino  
Director, Bureau of Supervision and Enforcement

cc: Reginald S. Evans, Chief Counsel