

(717) 787-1471

January 29, 1998

Re: \*\*\*\*\*

Dear \*\*\*\*\*

This letter responds to your request for additional information related to my letter dated December 29, 1997.

1. Does Pennsylvania authorize a bank, having its charter and trust powers granted by the state of Ohio, to act as a fiduciary in Pennsylvania through branch locations it maintains in Pennsylvania?

An Ohio state-chartered bank which has trust powers and qualifies as an "interstate bank," as defined in section 102 of the Banking Code of 1965 (the "Code"),<sup>1</sup> may establish and maintain branch offices in Pennsylvania, consistent with the provisions of section 904 of the Code.<sup>2</sup> An interstate

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<sup>1</sup> An "interstate bank" is defined as "...a banking institution existing under the laws of another state, the District of Columbia or a territory or possession of the United States and *authorized to engage in the business of receiving demand deposits* or a national bank having a head office in another state, the District of Columbia or a territory possession of the United States and *authorized to engage in the business of receiving demand deposits*, which lawfully maintains one or more branch offices in this Commonwealth." 7 P.S. § 102(hh)(emphasis added).

<sup>2</sup> Pursuant to section 904 of the Code, an interstate bank may establish and maintain:

...(iii) branches [in Pennsylvania] established with the prior written approval of the department, after the filing of an application for approval in a form prescribed by the department accompanied by any applicable fee and after investigation by the department, except the department approval

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bank is not prohibited from acting as a fiduciary in Pennsylvania under section 106 of the Code.<sup>3</sup> Therefore, an Ohio-state chartered bank with trust powers, which qualifies as an interstate bank, could act as a fiduciary in Pennsylvania to the extent permitted by its chartering state law.

2. Assuming the bank described above can offer trust services in Pennsylvania, does the Commonwealth permit such a bank to hire a third party to provide such services as agent?

As you know, the Pennsylvania Department of Banking (the "Department") is responsible for

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shall not be required for national banks.

**(b) Reciprocity condition** -- A banking institution existing under the laws of another jurisdiction may not establish a branch in this Commonwealth unless the laws of the state where it is located would permit an institution chartered under the laws of the Commonwealth or a national bank located in this Commonwealth to establish and maintain a branch in such other state on substantially the same terms and conditions.

7 P.S. § 904.

<sup>3</sup> Section 106 states: "No corporation existing under the laws of a state other than this Commonwealth or national bank located in another state, *except an interstate bank*, may act in this Commonwealth as a fiduciary unless...." 7 P.S. § 106(b)(emphasis added).

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enforcing the provisions of the Code, including section 106 which generally prohibits a foreign corporation from acting as a fiduciary in Pennsylvania. However, an Ohio state-chartered bank with trust powers, which qualifies as an interstate bank as defined in section 102, is not prohibited from acting as a fiduciary in Pennsylvania under section 106. An out-of-state banking institution, including a national bank, which does not qualify as an interstate bank is prohibited from acting as a fiduciary in Pennsylvania under section 106.

The ability of an Ohio state-chartered bank with trust powers to hire a third party to provide trust services in Pennsylvania as an agent of the Ohio state-chartered bank is governed by the Ohio state-chartered bank's primary regulator, the Ohio Division of Financial Institutions. Pursuant to the Nationwide Cooperative Agreement dated November 13, 1996, and entered into by the majority of the state banking supervisors, including Pennsylvania and Ohio, the home state supervisor of a multi-state banking institution is the primary regulator of the multi-state bank. Notwithstanding the above, in order to comply with the provisions of section 106, the interstate bank must continue to be named as fiduciary in any trust agreements where the interstate bank is acting as fiduciary in Pennsylvania, and the interstate bank must maintain ultimate fiduciary responsibility under the Pennsylvania fiduciary accounts.

3. Could a limited purpose national bank, located in Ohio, serve as agent under a contract with the Ohio state-chartered bank and process trust operations, conduct investments, solicit new business or administer accounts for the bank authorized to act as a fiduciary in Pennsylvania.

As noted above, provided that the Ohio state-chartered bank with trust powers: 1) qualifies as an interstate bank, 2) is named as the fiduciary on the trust accounts in Pennsylvania, and 3) retains the ultimate fiduciary responsibility with respect to the Pennsylvania accounts, the Pennsylvania Department of Banking would not deem the Ohio state-chartered bank, or the national bank acting as agent, to be in violation of section 106 of the Banking Code. However, the primary regulator of the Ohio state-chartered bank would be the authority to determine if the Ohio state-chartered bank could enter into an agency agreement with and delegate certain responsibilities to the national bank.

The Department's analysis is based upon the facts and conditions as stated in this letter. Any change in the facts could result in a 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.

I would be happy to meet with you or to participate in a telephone conference call regarding the contents of this letter and my letter of December 29, 1998. Please call to arrange such a meeting or conference call.

Very truly yours,

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