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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
David C. Hollister, Director

RONALD C. JONES, JR.
ACTING COMMISSIONER

March 20, 2003

XXXXX
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Dear XXXXX:

I am writing in reply to your October 24, 2002 letter requesting confirmation that expansion of the activities of YYYYY (Company), a wholly-owned subsidiary of ZZZZZ (ZZZZZ) to include:

- providing security consulting and monitoring services to affiliated and non-affiliated financial institutions and businesses,
 - providing security and guard services to other affiliated financial institutions and businesses and associations, and
 - providing investigative services to ZZZZZ customers
- would be permitted under the Michigan Banking Code of 1999 (Code).

The Company currently provides armored car services. The Company proposes to hire a veteran of the Federal Bureau of Investigation (Agent) who has 22 years' "experience in security and investigative matters, specializing in criminal activities related to financial institutions." The request represents that ZZZZZ "desires to centralize its security needs and operations with the Company" and anticipates that "the majority of the Company's resources will still be devoted to ZZZZZ and the extension of Security Services to affiliated companies and ZZZZZ customers."

The Code authorizes banks to engage in a wide range of activities. In addition to powers set forth explicitly in the Code, Section 4101(1) grants banks the powers they held under 1969 PA 319¹. These include the conduct of bank business through subsidiaries under section 151(16) of 1969 PA 319². Thus, an activity that a bank may conduct directly may be conducted through the bank's subsidiary.

Section 4105 of the Code³ explicitly authorizes a bank to conduct advisory and consulting services for others, which clearly encompasses the provision of security consulting services to affiliated and unaffiliated entities.

¹ former MCL 487.301 et seq.

² former MCL 487.451(16)

³ MCL 487.14105

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While the additional activities proposed to be conducted by Company are not explicitly permitted under the Code, neither are they explicitly prohibited. The Code provides, in addition to powers conferred in the 1999 Code and its predecessor, the Banking Code of 1969, that banks “may engage in . . . a business related or incidental to banking” and “shall have and exercise the powers and means appropriate to effect the purpose for which the bank is incorporated.”⁴

A bank’s ability to conduct activities to assure the security of the institution is among the “powers and means appropriate to effect the purpose for which the bank is incorporated” and requires no explicit authorization by the Commissioner. As a member bank of the Federal Reserve System, ZZZZZ is required under Federal Reserve Regulation H to “adopt appropriate security procedures to discourage robberies, burglaries, and larcenies, and to assist in the identification and prosecution of persons who commit such acts.”⁵ Physical security and guard services, as well as monitoring activities, are among activities typical to assure the security of a bank, its customers, and its assets. As a bank may conduct these activities directly, pursuant to MCL 487.14101 and former MCL 487.451(16) the bank may conduct its security activities through a subsidiary.

ZZZZZ also desires Company to conduct these activities for affiliated organizations and other businesses. Acting on similar requests, the Comptroller of the Currency (Comptroller) has authorized national banks, direct competitors of state-chartered banks, to provide physical security and guard services at affiliates⁶ and to lease various kinds of excess capacity to others.

In approving use of a national bank’s subsidiary to provide security and guard services to affiliates, the Comptroller reasoned that:

- it is reasonable for a holding company to centralize its internal security in a single subsidiary entity to maximize efficient use of existing resources and expertise;
- providing internal security to affiliated banks and nonbank companies within the holding company system is akin to other types of financial correspondent services approved as incidental to banking;
- the extension of security services to affiliates is a by-product of the permitted activity being conducted by the bank.

In approving a national bank’s plans to lease excess capacity of its security console to other financial institutions, the Comptroller described the activity as “incidental to the provision of the bank’s own internal security. The choice is between leasing such excess capacity or incurring

⁴ MCL 487.14101(1)

⁵ 12 CFR 208.61(a)

⁶ Interpretive Letter No. 398, Comptroller of the Currency, September 28, 1987

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the expense of allowing the excess capacity to remain unused.”⁷ In May, 2002, the Comptroller adopted a regulation permitting national banks “in order to optimize the use of the bank’s resources or avoid economic loss or waste, [to] market and sell to third parties electronic capacities legitimately acquired or developed by the bank for its banking business.”⁸

The Comptroller’s rationale is equally applicable to state-chartered banks and to the instant proposal relative to provision of physical security and guard services and security monitoring services. Leasing of excess capacity to third parties may be viewed as related or incidental to the business of banking pursuant to Section 4101 of the Code.

The final segment of the ZZZZZ request involves provision of investigative services for ZZZZZ customers. While not cataloging the range of investigations that Company might be called upon to provide for bank customers, in your letter and a subsequent conversation you have suggested that the subjects of investigation requests would include:

- Anticompetitive conduct;
- Assisting in retrieval of stolen assets following a criminal occurrence;
- Background checks on personnel, suppliers or affiliated businesses;
- Insurance fraud;
- Monitoring individuals who may pose a potential risk to the customer’s business or assets.

All the above are investigations of a type that a bank might conduct incidental to the conduct of its banking business and in furtherance of effecting the purpose for which the bank is incorporated, and thus such activities may be conducted through a subsidiary of the bank. Consistent with the analysis above, leasing the excess investigatory capacity of the subsidiary may be viewed as incidental to the business of banking.

The Code contains no specific limitation on provision of physical security and guard services, security monitoring services, or investigative services by banks, and I am not aware of any other state law specifically limiting a bank’s conduct of these activities. Investment in the subsidiary relative to the proposed activities would be nominal compared to ZZZZZ’s other investments. Risks associated with conduct of the activities are manageable with appropriate policies, procedures, and insurance.

Section 24(a) of the Federal Deposit Insurance Act specifies that no insured state bank may engage as principal in any activity which is not permissible for a national bank, unless the bank is in compliance with applicable capital standards and the

⁷ No Objection Letter No. 86-15, Comptroller of the Currency, June 6, 1986

⁸ 12 CFR 7.5004

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FDIC has determined that the proposed activity would not pose a significant risk to the deposit insurance fund.⁹ The Federal Deposit Insurance Corporation has not ruled on the issue of provision of investigative services.

I have concluded, based upon the representations made on behalf of ZZZZZ and the analysis above, that Company is permitted under the Michigan Banking Code of 1999 to provide security consulting and monitoring services to financial institutions and others, provide security and guard services to financial institutions and others, and provide investigative services to ZZZZZ customers. This determination is not intended to imply that any of the proposed activities that have not been ruled permissible for a national bank has been or will be determined by the Federal Deposit Insurance Corporation to “not pose a significant risk to the deposit insurance fund”. Such a determination must be obtained by ZZZZZ prior to Company commencing the proposed activities.

This agency expects that:

- a. ZZZZZ will ensure that prior to commencement of the proposed activities Company has in place procedures and controls designed to:
 - i. comply with applicable laws and regulations including those regarding customer privacy, licensure, and conduct of the proposed activities.
 - ii. minimize risk associated with conduct of the proposed activities, including reputational risk to ZZZZZ.
 - iii. promote the conduct of the proposed activities in a safe and sound manner.
- b. Investigative services conducted by Company will be limited to investigations of a nature that might be conducted by ZZZZZ in the furtherance of its banking business.
- c. ZZZZZ will monitor the activity of Company to assure that the latter conducts the proposed activities in a safe and sound manner and in compliance with “a” and “b” above.

Questions regarding this issue should be directed to Deputy Commissioner Peggy Bryson at 517/373-9552 or pbryso@michigan.gov.

Sincerely,

Ronald C. Jones, Jr.

⁹ 12 U.S.C. 1831(a)

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Acting Commissioner