



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

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ISGC-2007-008-DOB

May 23, 2007

[REDACTED]

RE: Reciprocity with Rhode Island Regarding Non-Depository Activities

Dear [REDACTED]:

You have inquired on behalf of your client, a Washington State-chartered bank (“Bank”), concerning reciprocity between Washington State and Rhode Island with respect to Bank’s continued right (if at all) to claim exemption from the Rhode Island’s Lender and Loan Broker Licensing Law for certain non-depository activities of agents of Bank conducting business in Rhode Island.

1.0 Prior Representations and Interpretation

In 2004, the Division of Banks issued an interpretive letter (DOB Interpretive Letter 04-002), which addressed the issue of Bank purchasing home improvement contracts from contractors in Rhode Island. The question addressed was whether there are any restrictions in Washington State law for a Rhode Island bank to conduct a similar activity. In that previous interpretive letter, our Director of Division of Banks concluded that there were no such restrictions based upon the representations of Bank at that time.

2.0 New Representations

Now, Bank desires to expand its activities in Rhode Island to include a direct loan program, in which Bank will make loans directly to customers in Rhode Island to finance home improvements based upon the following representations:

The applications for such loans will be taken by a contractor and forwarded to Bank for processing. The loans will be funded in one of two ways: Either (1) a single disbursement loan with a check made payable jointly to the contractor and the borrower and conditioned upon receipt of a completion certificate executed by both the contractor and the borrower, or (2) a "staged funding" loan where there will be two or more disbursements, one at time of execution of the loan documents (before any work commences) and the balance as work progresses or is completed. The checks will be made payable only to the contractor (unless otherwise required by state law) and there will only be a completion certificate at the time of the final disbursement (no interim certifications of job progress or lien waivers).

Bank will be shown as the lender on all loan documents and regulatory disclosures. Bank and the contractor will enter into a master dealer agreement ("Master Dealer Agreement") whereby the contractor will make certain warranties to Bank regarding a loan application and the quality of work, and agree to make a third-party purchase of a loan if the warranties are breached. Bank will not pay contractors any sort of fee or compensation for arranging loans, and the Master Dealer Agreement will prohibit contractors from collecting any fees from borrowers for arranging financing. Each loan will be secured by a lien on the improvements financed with the loan proceeds (in some, but not all, cases, Bank will perfect its lien with a UCC Fixture Filing). Bank will not, under any circumstance, take a mortgage or deed of trust on a borrower's home to secure a loan made under this program.

In addition, Bank is adding a Bank employee physically located in Rhode Island ("Rhode Island Employee") who will procure and manage relationships with contractors in Rhode Island and adjacent states. Rhode Island Employee will have no involvement in the approval or origination of individual loans and will not interact with borrowers except to occasionally coordinate resolution of problems of workmanship. Rhode Island Employee will not be involved in underwriting and will not take delivery of loan documents (the latter of which is done at the Bank).

3.0 Purpose of This Interpretive Letter

The purpose of this interpretive letter is to confirm to Bank and the Rhode Island Department of Business Regulation that, with respect to the Bank's represented activity, the laws of Washington State are, indeed, no more restrictive than those represented by the Bank's Rhode Island counsel to be the governing law of Rhode Island.

4.0 Law of Bank's Host State – Rhode Island

For purpose of this interpretive letter, we will assume, as we did in Interpretive Letter DOB 04-002, that:

- Rhode Island has a lender and loan broker licensing law¹ which requires lenders who engage in the activities of lending or loan brokering to be licensed.
- The Rhode Island licensing law has been amended² to exempt from licensure, subject to a written notice proscribed by the DBR director, a bank duly organized under the laws of any other state, if the law of the state in which the bank is organized would authorize a Rhode Island financial institution or credit union, under conditions not substantially more restrictive than those imposed by the laws of Rhode Island, to conduct the respective type of business in the other state.

5.0 Law of Bank’s Home State – Washington

5.1 No Sales Finance Company Licensing Statute. The Department of Financial Institutions (“Department”) confirms that Washington State does *not* have a sales finance company licensing statute. So to the extent that the updated representations might involve retail installment contracts, a Rhode Island bank would not be subject to any such law in Washington State.

5.2 No Lending Restrictions on Out-of-State Banks. RCW § 30.04.020 restricts a foreign corporation, whose name contains the words “Bank,” “Banker,” “Banking” or “Trust,” or whose articles of incorporation empower it to engage in banking or to engage in a trust business, from engaging in such business without specific authorization under state law, federal law, or from the Department.

However, as set forth in subsection (2) of RCW § 30.04.020(2): “If an activity would not constitute ‘transacting business’ within the meaning of RCW 23B.15.010(1) or chapter 23B.18 RCW, then the activity shall not constitute banking or engaging in a trust business.”

In addition, the Washington Business Corporations Act, at RCW § 23B.15.010, provides, in pertinent part, as follows:

“(1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

• • •

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1) of this section:

• • •

(g) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same

• • • • ”

¹ Rhode Island General Laws § 19.14.1(6).

² In relevant part under Rhode Island General Laws § 19.14.1-10(a)(4).

Therefore, the Department confirms that Washington State does not impose any restrictions under RCW Titles 23B, 30 or 32 on the lending activities of an out-of-state bank.

5.3 No Requirement of Licensing under State Consumer Finance Laws. Finally, the Department also confirms that a bank or thrift, or parent, subsidiary or affiliate of a bank or thrift, is exempt from licensing under the Washington Mortgage Broker Practices Act³ and Consumer Loan Act.⁴

6.0 Official Interpretation

Accordingly, I conclude on behalf of the Department that a Rhode Island bank doing business in Washington State in the same manner as represented above would not be required to obtain a license under the Washington Mortgage Broker Practices Act (Ch. 19.146 RCW), the Consumer Loan Act (Ch. 31.04 RCW) or any other Washington State consumer finance law, nor obtain a charter under the Washington Commercial Bank Law (Title 30 RCW) or Washington Savings Bank Law (Title 32 RCW).

7.0 Concluding Remarks

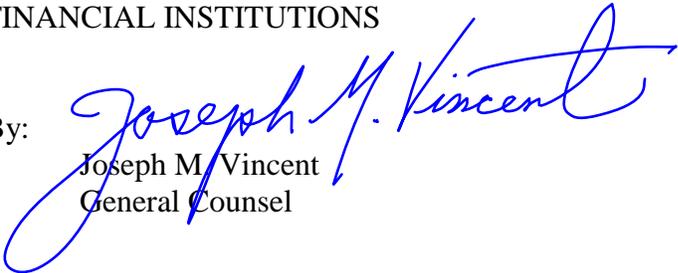
Please be advised that in issuing this interpretive letter, the Division of Banks has relied upon the interpretation of Rhode Island law (cited above) made previously by Rhode Island counsel for Bank and as reiterated by you, acting as new home state counsel for Bank. The laws of the State of Washington are uniformly applicable for any Washington State chartered bank, similarly situated. However, institutions other than Bank are advised that the relevant facts and circumstances of each Washington State chartered bank may be different; and such relevant facts, as applied to the governing law of a state other than Rhode Island, may result in the Department reaching a conclusion different than the one accorded the Bank in this case.

Should you have any questions, please do not hesitate to call upon me at (360) 902-0516.

Yours very truly,

WASHINGTON STATE DEPARTMENT OF
FINANCIAL INSTITUTIONS

By:


Joseph M. Vincent
General Counsel

³ RCW 19.146.020.

⁴ RCW 31.04.025.