



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

JANE SWIFT
GOVERNOR

May 15, 2001

THOMAS J. CURRY
COMMISSIONER

Jeff Riley
Morgan, Lewis & Bockius LLP
1800 M Street, NW
Washington, DC 20036-5869

Dear Mr. Riley:

This letter is in response to your correspondence dated January 5, 2001 and February 13, 2001 to the Division of Banks (the "Division") in which you request an opinion relative to whether a securities broker-dealer which refers potential mortgage customers to an affiliate mortgage company would be required to obtain a mortgage broker's license in the Commonwealth. This matter has also been discussed with you in numerous telephone conversations.

In your letter, you state that a securities broker-dealer (the "Company") and a mortgage company (the "Affiliate") are both subsidiaries of a foreign bank. The Company refers existing clients to the Affiliate, should the clients express an interest in obtaining a mortgage loan. The Company merely provides the Affiliate's name and telephone number to the customer and does not engage in any mortgage broker activities such as counseling the consumer or taking the mortgage application. The Company is not paid by the mortgage loan candidate or its Affiliate for the referral.

The mortgage loans written by the Affiliate are also secured by the borrower's securities held by the Company. In many cases, the value of the securities portfolio exceeds the value of the real estate. It is a program designed for wealthy individuals and helps these borrowers to obtain the best mortgage rate available. In connection with these mortgage loans, the Company performs certain services for the Affiliate. These services include monitoring and maintaining the collateral securities, retaining custody of the securities, delivering duplicate statements to the Affiliate and providing the Affiliate with reports on confirmation of trades of securities. For these services, the Company receives compensation from the Affiliate in the amount tied to the loan amount but not to exceed \$2,500.00 per year. The issue is whether this compensation is considered "compensation or gain" under Massachusetts General Laws chapter 255E for the purpose of mortgage broker licensing.

Said chapter 255E defines a "mortgage broker" as a person who for compensation or gain or in the "expectation of compensation or gain" directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement or find mortgage loans or residential property for others. While the Company does not actively negotiate or place mortgage loans on behalf of its clients, the act of referring such clients to the Affiliate certainly may be found to be assisting in the placement of



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the mortgage loan. Although the Company does not receive a broker's fee from either the client or the Affiliate upon the closing of the mortgage, it will clearly receive compensation for services performed in connection with loan servicing. The question is whether this compensation would require the Company to be licensed as a mortgage broker under said chapter 255E.

It is the position of the Division that no license is required, provided that the services performed by the Company in providing the services and securities trading reports is compensated solely in relation to the cost of performing such activities. In the event that the payments exceed such cost, the payments may be viewed as "compensation or gain" for the referral and assistance in obtaining the loan and a license would be required.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which may vary from that presented may result in a different position statement by the Division.

Sincerely,



Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

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