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DEPARTMENT OF FINANCIAL INSTITUTIONS
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ISGC – 2008 – 005A – DFI

June 11, 2008

[redacted]

RE: [redacted]
[redacted]l Licensing Exemptions under RCW 19.146.020(1)(a)(i) and RCW 31.04.025

Dear Mr. [redacted]

You have inquired of the Washington State Department of Financial Institutions (hereinafter, "Department") on behalf of your client, [redacted] Bank (hereinafter, "Bank"), whether [redacted] a Delaware series limited liability company (hereinafter, "Second Tier Subsidiary I"), and [redacted], a series limited liability company (hereinafter, "Second Tier Subsidiary II"), are exempt from the Washington Consumer Loan Act, Ch. 31.04 RCW (hereinafter, "CLA"), by reason of RCW 31.04.025, as amended by Laws of 2008 c 78 s 1 (SB 6471, §1). Because your representations have indicated that Secondary Tier Subsidiary I and Second Tier Subsidiary II act in both a brokering and lending capacity, we have expanded this letter to include a confirmation that Secondary Tier Subsidiary I and Second Tier Subsidiary II also qualify for exemption from licensing under the Mortgage Broker Practices Act (hereinafter, "MBPA"), by reason of RCW 19.146.020(1)(a)(i).

1.0 Representations. This interpretation is based upon the following representations you have made or which are otherwise known by the Department:

1.1 Bank. Bank is a stock savings bank doing business under and as permitted by Title 32 RCW.

1.2 First Tier Subsidiary I. [redacted]., a Washington profit corporation (hereinafter, "First Tier Subsidiary I"), is a wholly owned subsidiary service corporation of Bank.

1.3 Second Tier Subsidiary I. Second Tier Subsidiary I, as identified above, is a Delaware series limited liability company which is authorized under Section 18-215 of the Delaware Limited Liability Company Act. Under this legal structure:

1.3.1 Second Tier Subsidiary I has been organized into individual operating "series" (hereinafter, "Series LLC") each having separate assets, ownership and business operations;

1.3.2 Separate records have been kept for each Series LLC and each Series LLC's assets;

1.3.3 The certificate of formation and/or the operating agreement for Second Tier Subsidiary I provide that all the debts and liabilities existing with respect to each Series LLC are enforceable against the assets of such Series LLC only and not against the assets of the Second Tier Subsidiary I generally or any other Series LLC;

1.3.4 None of the liabilities incurred or otherwise existing with respect to Second Tier Subsidiary I generally or any other Series LLC are enforceable against the assets of such Series LLC;

1.3.5 By way of illustration, as of May 2005 there were 22 or 23 independent[redacted] Real Estate Offices (hereinafter, "[redacted] Offices") in which individual Series LLC are located for business (hereinafter, "Storefront Series LLCs");

1.3.6 Also by way of illustration, as of May 2005 there was an Internet-based, online Series LLC (hereinafter, "Online Series LLC");

1.3.7 Fifty percent (50%) of the beneficial ownership of Second Tier Subsidiary I generally and of each of its Storefront Series LLCs is held by First Tier Subsidiary I;

1.3.8 The other fifty percent (50%) of the beneficial ownership of Storefront Series LLCs is owned by one or more investors, typically the owners of the [redacted] Offices in which the Storefront Series LLCs are located; and

1.3.9 Originally First Tier Subsidiary I held one hundred percent (100%) of the beneficial ownership of Online Series LLC with the intent to transfer interests over time to investors but retain approximately fifty percent (50%) of the beneficial ownership of Online Series LLC.

1.4 First Tier Subsidiary II. [redacted], a Washington profit corporation, (hereinafter, "First Tier Subsidiary II"), is a wholly owned subsidiary service corporation of Bank.

1.5 Second Tier Subsidiary II. Second Tier Subsidiary II, as identified above, is a Delaware series limited liability company which is authorized under Section 18-215 of the Delaware Limited Liability Company Act. Under this legal structure:

1.5.1 Second Tier Subsidiary II has been organized into individual operating "series" (hereinafter, "Series LLC") each having separate assets, ownership and business operations;
1.5.2 Separate records have been kept for each Series LLC and each Series LLC's assets;
1.5.3 The certificate of formation and/or the operating agreement for Second Tier Subsidiary II provide that all the debts and liabilities existing with respect to each Series LLC are enforceable against the assets of such Series LLC only and not against the assets of the Second Tier Subsidiary I generally or any other Series LLC;
1.5.4 None of the liabilities incurred or otherwise existing with respect to Second Tier Subsidiary II generally or any other Series LLC are enforceable against the assets of such Series LLC;
1.5.5 At least fifty percent (50%) of the beneficial ownership of Second Tier Subsidiary II generally and of each of its Series LLCs is held by First Tier Subsidiary II; and
1.5.6 Any remaining beneficial ownership of Series LLCs is owned by one or more investors.

2.0 Summary Interpretation and Confirmation

Based upon the representations made in *Section 1.0* above and subject to the limitations set forth in *Section 4.0* below, the Department has determined and now confirms that Bank, First Tier Subsidiary I, Second Tier Subsidiary I (including each of its Series LLCs), First Tier Subsidiary II, and Second Tier Subsidiary II (including each of its Series LLCs) are exempt from the CLA, pursuant to RCW 31.04.025, and from the MBPA, pursuant to RCW 19.146.020(1)(a)(i). This interpretation and confirmation are based upon the detailed analysis set forth in *Section 3.0* below in reliance upon your representations to the Department as set forth in *Section 1.0* above.

3.0 Detailed Analysis and Interpretation.

3.1 Exemption from MBPA. The MBPA, at RCW 19.146.020(1), declares:

> "(1) Except as provided under subsections (2) through (4) of this section, the following are exempt from all provisions of [the MBPA]:
>
> (a)(i) Any person doing business under the laws of the state of Washington or the United States, and any federally insured depository institution doing business under the laws of any other state, relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations,

> credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof; and
>
> (ii) Subject to the director's written approval, the exclusive agents of an affiliate of a bank that is wholly owned by the bank holding company that owns the bank; . . . ."

None of the language of subsections (2) through (4) of RCW 19.146.020 relates to an entity identified in RCW 19.146.020(1)(a)(i) (hereinafter, "MBPA Exemption Clause"). Therefore, if the entities in question are within the class of persons identified in the MBPA Exemption Clause, they are exempt from *all* provisions of the MBPA. Based upon the representations set forth in *Section 1.0* above and the plain language of the MBPA Exemption Clause, Bank is clearly exempt from the MBPA.

3.2 Exemption from CLA. We now turn to whether Bank, First Tier Subsidiary I, Second Tier Subsidiary I (including each of its Series LLCs), First Tier Subsidiary II, and Second Tier Subsidiary II (including each of its Series LLCs) are exempt from the CLA. To make such a determination, we must look, first, to the second sentence of RCW 31.04.025 (hereinafter, "CLA Exemption Clause"), which was *not* amended by 2008 c 78 (SB 6471), and which states as follows:

> "Each loan made to a resident of this state by a licensee is subject to the authority and restrictions of this chapter, unless such loan is made under the authority of ((~~another license issued pursuant to a law of this state or under other authority of a law of this state~~)) chapter 63.14 RCW. This chapter shall not apply to any person ***doing business under and as permitted by any law of this state*** or of the United States ***relating to banks, savings banks,*** trust companies, savings and loan or building and loan associations, or credit unions, nor to any pawnbroking business lawfully transacted under and as permitted by any law of this state regulating pawnbrokers, nor to any loan of credit made pursuant to a credit card plan."

[Emphasis added.]

Applying this language to your inquiry, the Department makes the following determinations:

3.2.1 Bank Clearly Exempt from CLA. A Washington State-chartered savings bank, such as Bank, does "*business under and as permitted by the laws of this state . . . relating to . . . savings banks*," exactly as the language of RCW 31.04.025 is constructed. Therefore, Bank is clearly exempt from the provisions of the CLA without resort to any statutory construction or interpretation.

3.2.2 Interpretation as to Other Entities in Question. As to all the other entities in question, it is not *altogether* clear by reference to only the CLA Exemption Clause whether they are exempt from the CLA, since the CLA Exemption Clause literally requires that we look at related banking laws of this state.

In determining the Legislature's intent, the Department notes, first of all, that the CLA Exemption Clause relates to any person which was intended to be within the class of persons identified by its language – that is, ***not*** just a bank or other depository institution. If the person in question does business under and as permitted by a Washington State law related to savings banks, then the CLA Exemption Clause clearly exempts that person from the CLA.

Mortgage lending operating subsidiaries of Washington State-chartered commercial banks[1] and savings banks are closely related to their respective parent banks and savings banks. Pursuant to the authority of this Department under RCW 32.08.140 – a state law expressly relating to *savings banks* – a Washington State-chartered savings bank, such as Bank, may:

> (15) . . . exercise any other power or authority permissible under applicable state or federal law exercised by other savings banks or by savings and loan associations with branches in Washington to the same extent as those savings institutions if, in the opinion of the director, the exercise of these powers and authorities by the other savings institutions affects the operations of savings banks in Washington or affects the delivery of financial services in Washington[; and][2]
>
> (16) . . . exercise the powers and authorities conferred by RCW 30.04.215.[3]

This state law, which is part of the basic corporate authority of a savings bank under Title 32 RCW, in effect gives Washington State-chartered savings banks the authority (1) to maintain subsidiary activities which federal thrift institutions with branches in this state have authority to do and (2) to perform acts, by and through subsidiaries, which the Federal Reserve has determined as of July 27, 2003, are closely related to banking. In both instances, this would include the maintenance of a mortgage lending operating subsidiary.

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[1] The statutes the Department focuses on in the body of this letter are specifically enumerated powers and authorities (including federal parity) accorded to Washington State-chartered savings banks organized and operating under Title 32 RCW. Similar provisions exist under Title 30 RCW which would afford operating subsidiaries of Washington State-chartered commercial banks under Title 30 RCW the same treatment as Bank if they were situated the same or similarly to Bank. Briefly speaking, these "powers" provisions under Title 30 RCW include, without limitation, RCW 30.04.127 (investment in subsidiaries), RCW 30.04.215 (activities closely related to banking and powers of a federally chartered bank), and RCW 30.04.217 (the powers of a Washington State-chartered savings bank).

[2] This Department notes that at the inception of First Tier I Subsidiary, First Tier II Subsidiary, Second Tier Subsidiary I and Second Tier Subsidiary II, at least one federally chartered savings bank with branches in this state maintained a mortgage lending operating subsidiary somewhere in the United States.

[3] RCW 30.04.215(1), related to Washington State-chartered commercial banks, declares:

> "Notwithstanding any other provisions of law, in addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank or trust company may engage in other business activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of July 27, 2003."

Also, directly and by way of "parity" with federal banking law, RCW 32.08.142 directly grants to Washington State-chartered savings banks the extensive powers and authorities (subject to regulation by the Department) of a federal mutual savings bank under the federal Home Owners Loan Act (HOLA). HOLA powers include the ability to operate a mortgage lending service corporation as an operating subsidiary.

The Department must presume that the Legislature enacts statutes in full recognition of their relationship to the other laws which it has made. In the absence of an express or implied repeal,[4] all existing statutes which reference or relate to each other must be applied in unison. In the absence of unreasonableness by the Department, it is appropriate to defer to the Department's interpretation of a statute, particularly in view of the highly technical and often arcane subject matter regulated by the Department.[5] Secondly, the Department should interpret the same or similar terms in interrelated statutes the same way.[6] Thirdly, we must assume that the Legislature did not create discontinuities in legal rights and obligations without some clear statement.[7] And fourthly, we note that the laws principally governing Washington State-chartered commercial banks and savings banks (Title 30 RCW and Title 32 RCW, respectively) repeatedly speak of creating an "equal playing field" as between federal- and state-chartered institutions. This principle is embodied in the "federal parity" provisions of Title 30 RCW and Title 32 RCW. It is the view of the Department that the Legislature would not have intended over the years to grant "federal parity" under both Title 30 RCW and Title 32 RCW while intending to simultaneously create and/or perpetuate an unequal playing field for Bank and other Washington State-chartered depository institutions in relation to national banks and federal thrifts. In other words, the Department is of the view that the Legislature did not intend to deprive operating subsidiaries of Washington State-chartered commercial banks and savings banks of exemption from the CLA, while operating subsidiaries of national banks and federal thrifts – either under the language of the CLA Exemption Clause itself or federal regulatory and judicial interpretation of the National Bank Act and Home Owners Loan Act (HOLA) – were simultaneously permitted to be exempt.

The Department concludes that the Legislature's intent in the CLA Exemption Clause was to exempt mortgage lending operating subsidiaries of Washington State-chartered savings banks insofar as they do "*business under and as permitted by the laws of this state . . . relating to . . . savings banks* . . . ." Accordingly, Bank, First Tier Subsidiary I, Second Tier Subsidiary I

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[4] The conditions for implied repeal of any of the relevant statutes cited in this letter do not exist. See *State ex rel. Reed v. Spanaway Water District*, 38 Wn.2d 393, 396-397 (1951); *See also 1951-1953 Op. Atty. Gen. Wash. No. 500* (March 23, 1953). None of the statutes relevant in this letter has been expressly repealed.

[5] *See*, e.g., *Waggoner v. Ace Hardware Co.*, 134 Wash. 2d 784, 754-55, 953 P.2d 88, 91 (1998); *Dep't of Fisheries v. Chelan County PUD No. 1.*, 91 Wash. 2d 378, 383, 588 P.2d 1146, 1149 (1976); *State v. Roth*, 78 Wash. 2d 711, 715, 479 P.2d 55, 57-58 (1971).

[6] Note that this is different than the doctrine of *in pari materia*, which holds that similar statutes should be interpreted similarly. *Washington State Legislature v. Lowry*, *See* 131 Wash. 2d 309, 327, 931 P.2d 885, 894-95 (1997). See also *Pfeifer v. City of Bellingham*, 112 Wash. 2d 562, 569-570, 772 P.2d 1018, 1022 (1989); *Garvey v. St. Elizabeth Hosp.*, 103 Wash. 2d 756, 759, 697 P.2d 248, 249 (1985); *State v. Turpin*, 94 Wash. 2d 820, 825, 620 P.2d 990, 993 (1980); *State v. Wright*, 84 Wash. 2d 645, 652, 529 P.2d 453, 458 (1974).

[7] *See*, e.g., *State Dep't of Ecology v. Theodoratus*, 135 Wash. 2d 582, 589, 957 P.2d 1241, 1244 (1998); see also *City of Pasco v. Pub. Employment Relations Comm'n*, 119 Wash. 2d 504, 507, 833 P.2d 381, 382 (1992); *Pasco Police Officers' Ass'n v. City of Pasco*, 132 Wash. 2d 450, 458, 938 P.2d 827, 832; *Cowiche Canyon Conservancy v. Bosley*, 118 Wash. 2d 801, 828 P.2d 549 (1992).

(including each of its Series LLCs), First Tier Subsidiary II, and Second Tier Subsidiary II (including each of its Series LLCs) are exempt from the CLA.

4.0 Applicability of Letter and Limitations

This interpretation is subject to modification and/or to being rescinded and withdrawn if (1) the Department discovers in the future that the representations set forth in *Section 1.0* above are contrary to fact *and* (2) this discovery is of a significant enough nature that would result in the Department reaching a result materially different than the one made in this letter. This interpretation is generally applicable to any Washington State-chartered savings bank under Title 32 RCW and any subsidiary thereof which are similarly situated to the representations made in *Section 1.0* above. In addition, in keeping with comparable powers and authorities accorded to Washington State-chartered commercial banks under Title 30 RCW, the determination set forth in this interpretive letter is also generally applicable to any Washington State-chartered commercial bank under Title 30 RCW and any subsidiary thereof which are similarly situated to the representations made in *Section 1.0* above.

Notwithstanding the above, the Department reserves the privilege and authority to interpret applicable provisions of Title 30 RCW, Title 32 RCW, the MBPA and CLA differently to inquiries made by other persons which contain materially different representations than those set forth in *Section 1.0* above. Also, nothing in this letter shall necessarily affect any future determination of exemption from the CLA as to any depository institution chartered by the United States, another state or a foreign country, or any subsidiary or affiliate thereof.

Finally, this interpretation has no application as to whether or not third-party loan service providers – *other than* Bank, First Tier Subsidiary I, Second Tier Subsidiary I (including each of its Series LLCs), First Tier Subsidiary II, and Second Tier Subsidiary II (including each of its Series LLCs), and their respective principals, directors, shareholders, managers, officers, and employees – are exempt from the MBPA or CLA.

Yours very truly,

WASHINGTON STATE DEPARTMENT OF
FINANCIAL INSTITUTIONS

By: Joseph M. Vincent

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For Division of Banks and Division of Consumer Services