



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF BANKS

P.O. Box 41200, Olympia, Washington 98504-1200

ISGC-2010-003-DOB

October 15, 2010

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: Request for Interpretation and Approval dated September 10, 2010

Dear [REDACTED]:

I am responding to your request for interpretation and approval on behalf of your client, [REDACTED], dated September 10, 2010, in my capacity as Director of Banks for the Washington Department of Financial Institutions ("Department").

[REDACTED] ("Alien Bank") is an alien bank organized under the laws of Japan with a certificate of authority issued by the Department pursuant to the Washington Alien Bank Act (Chapter 30.42 RCW) [the "Act"] to operate an alien bank branch at 800 5th Avenue, Suite 2510, Seattle, WA 98104 ("Seattle Branch").

Alien Bank's Request

You have asked for the Department's interpretation of the Act, at RCW 30.04.060. In this regard, you have further requested that the Department consent to Alien Bank booking the paid-in capital of the Seattle Branch at its Los Angeles Branch.

Alien Bank's Representations

In making your request, you have made the following representations on behalf of Alien Bank:

1. Alien Bank is restructuring its West Coast U.S. branches as part of its so-called "Project [REDACTED]" to implement a hub and spoke management structure to its U.S. branch network.

2. As part of the hub and spoke structure, the branch manager of the Seattle Branch will report to the branch manager of the Los Angeles Branch of Alien Bank.
3. As part of "Project █████," Alien Bank intends to no longer book deposits or loans at its Seattle Branch and intends to transfer assets and liabilities from the Seattle Branch in order to have no assets or liabilities on the books of its Seattle Branch.
4. Under Japanese law, this would allow Alien Bank to treat the Seattle Branch as a *sub-branch*, but would not affect the U.S. legal and regulatory treatment of the Seattle Branch.
5. Although the Seattle Branch would no longer hold deposits or loans, the Seattle Branch would maintain branch status under the Washington Alien Bank Act rather than downgrade to a "bureau" in order to conduct banking operations that would be broader than those permitted for bureaus.
6. Maintaining branch status would offer more flexibility to Alien Bank should it decide to expand its activities in Washington with future consent of the Department, as may be required.
7. In order to maintain "sub-branch" status under Japanese law, the Seattle Branch cannot have any assets on its books, including the "paid-in capital."

Department's Interpretation

The question presented is whether the Department has the discretion and broad administrative authority to interpret the Act, at RCW 30.42.060(3) and RCW 30.42.070, so as to permit Alien Bank to maintain "paid-in capital" as required by depositing such capital with a "bank qualified to do business in and having its principal place of business within [Washington], or in a national bank qualified to engage in banking in this state," while booking such capital under Japanese law at the Los Angeles Branch rather than on the books of the Seattle Branch.

RCW 30.42.060(3) requires that, prior to opening an office in Washington, an alien bank must "allocate[e] and assig[n] to its office within this state paid-in capital of not less than two hundred thousand dollars or such larger amounts as the director in his or her discretion may require." This requirement has been met by the Seattle Branch.

RCW 30.42.070 further declares:

The capital allocated . . . shall be maintained within this state at all times in cash or in director approved interest bearing bonds, notes, debentures, or other obligations: (1) Of the United States or of any agency or instrumentality thereof, or guaranteed by the United States; or (2) of this state, or of a city, county, town, or other municipal corporation, or instrumentality of this state or guaranteed by this state, ***or such other assets as the director may approve. Such capital shall be deposited*** with a bank qualified to do business in and having its principal place of

business within this state, or *in a national bank qualified to engage in banking in this state. Such bank shall issue a written receipt addressed and delivered to the director reciting that such deposit is being held for the sole benefit of the United States domiciled creditors of such alien bank's Washington office and that the same is subject to his or her order without offset for the payment of such creditors.* . . . Subject to the approval of the director, reasonable arrangements may be made for substitution of securities.

[Emphasis added.]

Your request has specifically called for maintaining the required paid-in capital with Wells Fargo Bank subject to a control agreement (“Control Agreement”), the language of which meets the specific requirements of the Act, including RCW 30.04.070, and which has been approved by the Department.

Pursuant to RCW 30.04.030(2), the Department has “the power, and broad administrative discretion, to administer and interpret the provisions of [Title 30 RCW, including the Act,] to facilitate the delivery of financial services to the citizens of the state of Washington by the banks subject to [Title 30 RCW],” including Alien Bank.

Department’s Determination & Conditional Grant of Authority

Based upon your representations and our analysis and interpretation of the relevant provisions of the Act, the Department hereby determines that it has the statutory authority under the Act and the broad administrative discretion to permit Alien Bank to continue to operate its Seattle Branch as an alien bank branch, consistent with your representation regarding Japanese law, subject to the following specific terms and conditions:

1. Paid-in capital as required under the Act shall be deposited with and be maintained by a Washington State branch of [REDACTED] Bank, a national banking association.
2. Wells Fargo Bank shall issue a written receipt addressed and delivered to the Department reciting that such deposit is being held for the sole benefit of the United States domiciled creditors of Alien Bank’s Seattle Branch and that this deposit is subject to Department’s directive or order without offset for the payment of such creditors.
3. The paid-in capital will still be subject to the requirement that it be restored if the assets drop in value below the amount required.
4. The deposit with a Washington State branch of Wells Fargo Bank shall be subject to and governed by a control agreement (“Control Agreement”) effectively making the deposit subject to the control of the Department for purposes of satisfying the paid-in capital requirements of the Act as set forth in this letter.
5. The Department, by and through the Director of Banks, Alien Bank (as depositor), and [REDACTED] Bank (as depository), shall be parties to and sign the Control Agreement, and shall be bound thereby.
6. The Control Agreement must be in a form which has been previously agreed upon, which is attached and made a part of this letter, the terms and conditions of which are incorporated herein by this reference.

In keeping with the Department's broad administrative discretion, this conditional grant of authority is also being made in order to facilitate the delivery of financial services to the citizens of this state (including corporate citizens important to the economy of Washington) who are the clientele of Alien Bank.

The interpretation and determination set forth in this letter are limited to the specific request and representations of Alien Bank and shall have no general application to other alien banks that are or may become subject to the Act. If you have any further questions, please do not hesitate to call upon Michael C. Abe, Program Manager, Division of Banks, at (206) 956-3229 or mabe@dfi.wa.gov.

Yours very truly,

WASHINGTON STATE DEPARTMENT OF
FINANCIAL INSTITUTIONS

Division of Banks

By:

Brad Williamson
Director of Banks

Attached and Made a Part of WDFI Letter dated October 15, 2010
APPROVED DRAFT of "CONTROL AGREEMENT"

Washington State Allocated Paid-In Capital
Deposit Account Control Agreement

This Deposit Account Control Agreement (the "Agreement") is made as of the ____ day of October, 2010 by and among [REDACTED] (the "Alien Bank"), [REDACTED] Bank, N.A. (the "Depository Bank"), and the Washington State Department of Financial Institutions (the "DFI").

The Alien Bank and the Depository Bank certify, acknowledge and agree as follows:

1. Purpose and Nature of the Agreement.

The Agreement is to be provided to the DFI for purposes of meeting the requirements of Sections 30.42.060 and 30.42.070 of the Washington Alien Bank Act, Chapter 30.42, Revised Code of Washington ("Washington Alien Bank Act"), and the DFI's letter of October __, 2010, to the Alien Bank regarding the paid-in capital required to be allocated to maintain the Seattle Branch of the Alien Bank within the State of Washington. The Agreement is intended to constitute a security agreement and control agreement pursuant to the Uniform Commercial Code relating to the account defined below.

2. The Account

The Depository Bank represents and warrants to the DFI that (a) the Depository Bank maintains account number _____, (the "Account") in the name of _____ and (b) the Depository Bank does not know of any claim to or interest in the Account, except for the claims and interests of the DFI and the Alien Bank. The Account shall be maintained in a branch of the Depository Bank located in the State of Washington. The Account is governed by this Agreement, the High Performance Money Market Account Agreement entered into by and between the Depository Bank and the Alien Bank, and the Deposit Agreement and Disclosures for Commercial Accounts entered into between the Depository Bank and the Alien Bank. In the case of any conflict between this Agreement and any other agreement, this Agreement shall control.

3. Control by the DFI

Depository Bank will comply with all notifications it receives directing it to transfer or redeem any assets in the account (each an "order") originated by the DFI or the Office of the Treasurer of Washington State ("Treasurer") immediately without further consent by the Alien Bank.

Such control by the DFI and the Treasurer shall include, but not be limited to, an entitlement by either the DFI or Treasurer to direct the Depository Institution to stop payment on any instruments drawn on the Account, and to withdraw or transfer funds. The Depository Institution shall comply with instructions originated by the DFI or Treasurer without regard to whether the

Alien Bank is or is not then in default under this Agreement, and notwithstanding any contrary instructions which may be given by the Alien Bank or by any other person or entity.

The Depository Bank represents and warrants that no third party has a right to give orders or instructions regarding assets in the Account. The Depository Bank will not agree with any third party that the Depository Bank will comply with instructions or orders originated by the third party.

The Alien Bank shall not be permitted to close the Account without the written consent of the DFI.

4. Alien Bank's Interest in the Account

The Alien Bank may from time to time deposit funds into the Account to meet the requirements of Sections 30.42.060 and 30.42.070 of the Washington Alien Bank Act, and the DFI's letter of October __, 2010, and the Depository Bank agrees to accept such deposits to the Account until the termination of this Agreement.

Unless the DFI or Treasurer otherwise orders, the Alien Bank may issue orders or directions and the Depository Bank may comply with such orders or instructions concerning the Account; provided that, such orders or instruments do not amend this Agreement, withdraw any funds from the Account, or terminate or amend the agreements regarding the Account without the consent of the DFI.

Notwithstanding the foregoing, the Depository Bank may pay interest on the Account to the Alien Bank and allow such interest to be withdrawn unless it receives a contrary order from the DFI or the Treasurer.

5. Grant of Security Interest

The Alien Bank grants a security interest to the DFI in the Account and the deposited assets now or hereafter held therein, or the proceeds thereof, pursuant to Sections 30.42.060 and 30.42.070 of the Washington Alien Bank Act,, and the DFI's letter of October __, 2010.

6. Statements, confirmations and notices of adverse claims

The Depository Bank will send all statements and confirmations for the Account to the Alien Bank with a copy to the DFI. The Depository Bank will use reasonable efforts to promptly notify the DFI and the Alien Bank if any other person claims that it has a property interest in an asset in the Account.

7. Subordination

The Depository Bank agrees that any security interest now held or hereafter acquired by it in the Account and/or in the funds now or hereafter in the Account is and shall be subject and subordinate to the security interest granted to the DFI by this Agreement. The Depository Bank

further agrees that any right of recoupment or set off now held or hereafter acquired by it against the Account and/or against the funds now or hereafter in the Account is and shall be subject and subordinate to the security interest granted to the DFI by this Agreement. The Alien Bank hereby consents to such subordination and acknowledges the existence of such subordination.

8. No other Security Interest to be Granted

The Alien Bank agrees that the Alien Bank will not grant a security interest in the Account to any person or entity other than the DFI.

9. Waiver of Rights

Only with respect to this Agreement and this Account, the Depository Bank and the Alien Bank hereby waive federal preemption of Washington State law under any application of Subtitle D, Title X of the Dodd-Frank Act, or any other federal law or regulation, by the Office of the Comptroller of the Currency, or successor banking regulator, that would restrict or otherwise inhibit authority of the Director of the DFI, acting under his own directive, to execute on the Account to the fullest extent permitted under the Washington Alien Bank Act.

Only with respect to this Agreement and this Account, the Alien Bank hereby waives any rights it may have under any international law or treaty or memoranda of understanding among the government and agencies of United States and Japan that would restrict or otherwise inhibit authority of the Director of the DFI, acting under his own directive, to execute on the Account to the fullest extent permitted under the Washington Alien Bank Act.

10. Other Terms

The Agreement shall be binding upon the Depository Bank and the Alien Bank and their respective personal representatives, successors and assigns. The Agreement cannot be assigned, terminated or modified by Alien Bank or the Depository Bank without the written consent of the DFI. The Agreement may be terminated by a written instrument executed solely by the DFI. If the Washington Alien Bank Act is amended or superseded in any manner that would affect the rights and obligations of Alien Bank or the authority and privilege of the DFI in regard to this Agreement, the parties agree to re-negotiate the terms of this Agreement to effect the original intent of this Agreement, to the fullest extent permitted by such amendments or other changes in governing law.