

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Business Oversight

October 2, 2015

Re: Yankee CDs – _____

Dear _____:

Thank you for your letter dated May 14, 2015, in which you asked the Department of Business Oversight (Department) to deem certain Yankee CDs held by _____ as eligible securities for purposes of the Money Transmission Act. Your request has been granted, and an order is enclosed.

Background

_____ is a money transmitter licensed by the Department to do business in California. In your letter, you stated that during a recent examination, Senior Financial Institutions examiner _____ indicated to _____ that its Yankee CDs did not meet the criteria for eligible securities under the Money Transmission Act. Yankee CDs are negotiable certificates of deposit that are issued by the United States branches of foreign banks and denominated in United States Dollars. Unlike certificates of deposit issued by banks domiciled in the United States, Yankee CDs are not federally insured. You argued in your letter that _____'s Yankee CDs should be considered eligible securities under the Money Transmission Act.

You offered two main reasons in support of your request. First, Yankee CDs are "other obligations" under Financial Code section 2082(b)(7). Second, _____'s Yankee CDs are of sufficient liquidity and quality as required by Financial Code section 2086 and therefore should be declared eligible securities under Financial Code section 2082(b)(11). We do not agree that Yankee CDs are "other obligations" under Financial Code section 2082(b)(7). However, we agree that _____'s Yankee CDs are of sufficient liquidity and quality under Financial Code section 2086.

Eligible Securities Requirement

Financial Code section 2081(a) requires a money transmitter to "at all times own eligible securities" in an amount sufficient to secure all its outstanding money received for transmission in the United States. Financial Code section 2082(a) provides that "eligible security" includes any United States currency eligible security or foreign currency eligible security. Financial Code Section 2082(b) provides a list of 12 qualifying United States currency eligible securities.

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You essentially argued that Yankee CDs are “other obligations” under Financial Code section 2082(b)(7) and that they are similar to deposits. We do not agree that Yankee CDs are “other obligations.” Rather, they are deposits, and in this case, of uninsured United States branches of foreign banks.

Yankee CDs are of sufficient liquidity and quality to be eligible securities pursuant to Financial Code section 2086

Financial Code section 2082(b)(11) authorizes the Commissioner to declare securities to be eligible securities even if they do not fall within the descriptions provided by the other subdivisions. One instance in which the Commissioner may do this is if she determines that a security is of sufficient liquidity or quality. This authority is expressly conferred by Financial Code section 2086:

If the commissioner finds that any security or class of securities that is not an eligible security is of sufficient liquidity and quality to be an eligible security, the commissioner may by regulation or order declare the security or class of securities to be eligible securities.

You argued that the Commissioner should find that Yankee CDs are of sufficient liquidity and quality. You stated that Yankee CDs are sufficiently liquid because they have terms of less than two years and are freely tradable on a secondary market. You argued that the Yankee CDs are of sufficient quality because they are all issued by “established, highly rated global banks” and are either rated or included in the banks’ long term deposit rating.

We agree that the Yankee CDs described in your letter satisfy both requirements. They are highly tradeable on the secondary market and their issuers are of satisfactory quality. Thus, pursuant to Financial Code section 2082(b)(11), the Commissioner has declared that the Yankee CDs are eligible securities. The Order Declaring Eligible Securities and Order of Exemption are enclosed.

The Department’s position is based solely on the representations contained in your May 14 letter. Any change in the facts or circumstances, as we understand them, could lead to a different conclusion.

Please contact the undersigned at (916) 322-5983 if you have any questions.

Sincerely,

JAN LYNN OWEN
Commissioner of Business Oversight

By
Manuela Rumsey
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MR:is
Enclosure

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco