State of Utah

DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

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September 27, 1994

Alan M. Parness
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, New York 10038

Re: Dean Witter Reynolds Inc.
File #002-2990-20/A30721-35
Request for No-Action Letter

Dear Mr. Parness:

This letter is in response to your letters dated August 9, 1994 and August 31, 1994, in which you requested that the Utah Division of Securities ("Division") issue a No-Action Letter or Interpretive Opinion regarding the availability of exemptions under Sections 61-1-14(1)(c) and/or 61-1-14(1)(a) of the Utah Uniform Securities Act (the "Act") for the regular offering and sale of investment certificates issued by certain California-chartered industrial loan companies ("ILCs"). Such request is more fully described in your letters.

Based on the facts presented in your letters, and in reliance upon your opinion as counsel, the Division will not recommend enforcement or administrative action should the transactions proceed as outlined in you letters. In arriving at this position, the Division notes in particular, the following representations:

a) The ILCs are insured by the Federal Deposit Insurance Corporation ("FDIC"). Consequently, each purchaser of a certificate will have aggregate insurance coverage of up to $100,000.

b) No individual may purchase more than $90,000 worth of certificates to ensure full FDIC coverage.

c) The ILCs are subject to extensive supervision and regulation by the California Department of Corporations.

d) The ILCs maintain banking-type powers.

This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the Division's position on enforcement or other administrative actions.

Inasmuch as this recommendation is based upon the representations made to the Division, it should be noted that any different facts or conditions of a material nature might require a different conclusion. Furthermore, this no-action letter relates only to the referenced issuers and securities and shall have no value for future similar offerings and does not absolve any party involved from complying with the anti-fraud provisions contained in § 61-1-1 of the Act.

Very truly yours,

DIVISION OF SECURITIES

S. Anthony Taggart
Director of Corporate Finance

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August 9, 1994

Division of Securities
Department of Commerce
160 East 300 South
Salt Lake City, Utah 84111

Re: Dean Witter Reynolds Inc.
Investment Certificates Issued
by California Industrial Loan
Companies
Request for No-Action Letter or
Interpretive Opinion Regarding
Sections 61-1-14(1)(c) and 61-1-14(1)(a)

Dear Sir or Madam:

On behalf of Dean Witter Reynolds Inc. ("DWR"), request is hereby made, pursuant to Section 61-1-25(5) of the Utah Uniform Securities Act (the "Act"), and Rule 164-25-5 promulgated thereunder, for a no-action letter or an interpretive opinion as to the availability of the exemptions under Sections 61-1-14(1)(c) and/or 61-1-14(1)(a) of the Act for the regular offering and sale, by DWR and certain other broker-dealers licensed under the Act (together with DWR, the "Agents"), and in accordance with a program (the "Program") established by DWR, of investment certificates ("ICs") issued by California-chartered industrial loan companies[1] (each, an "Issuer").

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[1] Pursuant to Cal. Fin. Code §§ 18003 and 18003.1, these companies may also be called "thrift and loan companies" or "investment and loan companies."

Description of IC Program

After a credit review by DWR, Issuers accepted into the IC Program enter into an Investment Certificate Agency Agreement (an "Agreement"), in substantially the form enclosed herewith, with DWR acting either as sole Agent or as representative of the other Agents (Agents enter into a Certificates of Deposit Participation Agreement with DWR, substantially in the form enclosed herewith). Under the terms of the Agreement, among other representations, warranties and covenants, Issuers represent and warrant that they meet all regulatory capital standards required by Section 29 of the Federal Deposit Insurance Act (the "FDIA"), 12 U.S.C. § 1831f.[2] The following is a general description of the Program.

All of the ICs are insured by the Federal Deposit Insurance Corporation (the "FDIC"); accordingly, each purchaser of an IC (each, a "Purchaser") will have an aggregate of $100,000 of coverage for the principal of, and interest or earned discount on, ICs purchased by the Purchaser (aggregated with any other accounts maintained by the Purchaser with the Issuer and required to be aggregated under the FDIA and the FDIC's rules promulgated thereunder). In this connection, note that Section 3 of the Agreement prohibits any Purchaser from purchasing more than 90 ICs ($90,000 in the case of interest-bearing ICs), so as to assure FDIC insurance coverage of the principal of, and accrued interest or earned discount on, the specific ICs purchased.

In most cases, no individual certificates evidencing the ICs will be issued; rather, in accordance with FDIC recordkeeping rules codified at 12 C.F.R. § 330.4, a "master" IC, in substantially the form annexed to the Agreement as Exhibit B - Part I (for fixed or adjustable rate ICs) or Exhibit B - Part II (for zero coupon ICs), in an aggregate principal amount of all ICs sold of a particular issue, will be issued by the Issuer to "CEDE & CO.," the nominee of The Depository Trust Company ("DTC"), acting as custodian for the Agents. In turn, DTC will maintain records reflecting that the ICs are held for the Agents, each acting as nominee, authorized representative, custodian, or agent for its customers who are the Purchasers, and each Agent will maintain its own records reflecting the actual ownership of the ICs by the respective Purchasers.

DWR and, where applicable, other Agents, will generally offer and sell the ICs on a "best efforts" basis as agents for the Issuer. The specific terms of any IC issue are detailed in a

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[2] In rare instances, certain Issuers not meeting such standards will have received special waivers from the Federal Deposit Insurance Corporation under Section 29 to issue ICs.

Terms Agreement, substantially in the form of Exhibit A to the Agreement. Commissions for sales of ICs will be paid to the Agents by the Issuer; Purchasers will pay no commissions.

Each IC is in the principal amount of $1,000 at stated maturity (certain ICs are sold at a discount on a "zero coupon" basis), and no additions are permitted to ICs. Withdrawals are permitted only in the case of death or adjudication of incompetence (in which case principal and accrued interest or earned discount may be withdrawn in full, without penalty); however, in accordance with Cal. Fin. Code § 18315 and a rule promulgated thereunder by the California Department of Corporations (the "CDC"), which regulates the Issuers, ICs will be repurchased by Issuers, subject to certain conditions, including imposition of a penalty (see Section 7(e) of the Agreement). ICs will not be automatically renewed at maturity.

DWR and the other Agents presently intend, but are not obligated, to maintain a secondary market in ICs, with a minimum trading unit of one IC of $1,000 in principal amount. The prospect of a secondary market in ICs makes the Program particularly advantageous to Purchasers, since similar ICs acquired directly from the Issuer would not ordinarily be transferable, and the Purchaser would have to depend on the Issuer's repurchase obligation for "liquidity."

Purchasers receive a "generic" form of Information Statement, in substantially the form of Exhibit C to each Agreement. As you will note, while the Information Statement does not provide specific information regarding the particular Issuer or the ICs offered, it advises the Purchaser how such information may be obtained from the Agent (see "Information on the Institution" and "Terms of ICs" on pages 1-2 of the Information Statement), and provides substantial general information about the ICs, including a detailed description of deposit insurance coverage. Purchasers also receive a confirmation of purchase, in the Agent's customary form, describing the ICs purchased and the Issuer.

Description of Issuers

While the Issuers are prohibited from advertising or representing that they are "banks" or "savings and loan associations" by Cal. Fin. Code § 18057, such distinction appears to be more an exercise in semantics than substance. First, "industrial banks" and similar depository institutions are deemed "state banks" within the meaning of FDIA § 3(a)(2), 12 U.S.C. § 1813(a)(2), therefore qualifying for deposit insurance coverage as "banks" and "insured depository institutions" under FDIA §§ 3(a)(1)(A) and 3(c)(2), 12 U.S.C. §§ 1813(a)(1)(A) and 1813(c)(2). Since July 1, 1990, all preexisting and new

California industrial loan companies (including the Issuers) have been required by Cal. Fin. Code § 18521.5 to obtain FDIC insurance as a condition of conducting business.

Second, California industrial loan companies are authorized to lend money, on a secured or unsecured basis (Cal. Fin. Code §§ 18190 *et seq.*), and to sell accounts in the form of investment certificates, which are in essence certificates of deposit (Cal. Fin. Code §§ 18315 *et seq.*), powers which are essentially the same as those exercised by banks and savings and loan associations.

Third, the Issuers are subject to extensive supervision and regulation by the CDC pursuant to Cal. Fin. Code §§ 18000 *et seq.*, as well as by the FDIC, in roughly the same manner as banks and savings and loan associations. For example, the CDC must make a careful investigation and examination of various matters before an application for authority to engage in business is granted to a proposed industrial loan company, the company's capitalization is subject to a number of conditions and restrictions, and branch offices and relocations are subject to CDC approval. Further, industrial loan companies' assets may be seized and liquidated, or they may be placed in conservatorship, for violation of statutory requirements substantially similar to those applicable to banks and savings and loan associations. It should also be noted that the Issuers, as FDIC-insured institutions, are also subject to certain rules promulgated by the Board of Governors of the Federal Reserve System (see, *e.g.*, Regulation D, 12 C.F.R. Part 204, governing reserve requirements, and Regulation DD, 12 C.F.R. Part 230, the "Truth In Savings" rules).

Request for No-Action Letter or Interpretive Opinion

1. Availability of "Bank Securities" Exemption

In light of the manner in which the Issuers are organized and supervised, and the activities they conduct, we believe, and respectfully request that you issue a no-action letter or an interpretive opinion confirming, that the ICs qualify as exempt securities under Section 61-1-14(1)(c) of the Act, as securities "issued by and representing . . . a debt of . . . any bank . . . supervised under the laws of any state."

In this connection, it is noted that the staff of the Securities and Exchange Commission (the "SEC") has recognized that ICs issued by California industrial loan companies qualify for exemption under Section 3(a)(2) of the Securities Act of 1933, as amended, as securities "issued . . . by a bank." Enclosed find a copy of The Morris Plan Company of California

(SEC No-Action Letter, May 7, 1990), which includes pertinent background information regarding these institutions.

Also enclosed find copies of no-action letters or interpretive opinions (with our inquiry letters attached) which we obtained from the states of Arizona, Colorado, and New Jersey, in which those states confirmed that the ICs being offered and sold in the Program qualify as "exempt securities" under the respective statutory exemptions for securities issued by "banks" or "depository institutions." Considering that these states' exemptions are substantially identical to Section 61-1-14(1)(c) of the Act, we believe such letters and opinions are relevant precedent for our position in this regard..

2. Availability of "Government Securities" Exemption

Since the ICs will be FDIC-insured up to $100,000, and since DWR and the Agents have undertaken not to sell more than 90 ICs ($90,000 principal amount in the case of interest-bearing ICs) to any one customer, we also believe, and respectfully request that you issue a no-action letter or an interpretive opinion confirming, that the ICs qualify as exempt securities under Section 61-1-14(1)(a) of the Act, as securities "guaranteed by the United States . . . or any agency [thereof]." In this connection, we also refer you to: (a) Section 901(b) of the Competitive Equality Banking Act of 1987, Public L. No. 100-86, 101 Stat. 657 (1987), in which Congress confirmed that "deposits up to the statutorily prescribed amount in federally insured depository institutions are backed by the full faith and credit of the United States"; and (b) FDIA § 18(a), 12 U.S.C. § 1828(a), requiring insured institutions to display a logo that "insured deposits are backed by the full faith and credit of the United States Government." We believe such statutory provisions confirm that the FDIC's insurance coverage is tantamount to a "guarantee" within the meaning of the foregoing exemptive provision.

In this connection, enclosed find copies of: (i) no-action letters or interpretive opinions (with our inquiry letters attached) which we obtained from the states of Georgia, Michigan, Missouri, North Carolina, Virginia, Washington, West Virginia, and Wyoming with regard to the ICs being offered and sold in the Program, and (ii) a December 3, 1993 opinion letter by the Kansas Securities Commissioner, as reprinted at 2A Blue Sky L. Rep. (CCH) ¶ 26,547, with regard to insured deposits (including "investment certificates") issued by industrial loan companies organized outside Kansas. As you will note, these states confirmed that ICs qualify as "exempt securities" under the respective statutory exemptions for U.S. government-guaranteed securities, provided that sales do not exceed the $100,000 insurance limit. Considering that these states'

exemptions are substantially identical to Section 61-1-14(1)(a) of the Act, we believe such letters and opinions are relevant precedent for our position in this regard.

In addition, enclosed find copies of no-action letters (with our inquiry letters attached) which we obtained from the states of Connecticut and North Dakota with regard to the ICs being offered and sold in the Program. As you will note, these states took no-action positions without specifying whether they were premised on the "bank securities" or "government-guaranteed securities" exemptions in their respective statutes.

Enclosed please find a check for $120 in payment of the filing fee required by Section 61-1-18.4 of the Act and the schedule reprinted at 3 Blue Sky L. Rep. (CCH) ¶ 57,171 promulgated thereunder.

We would appreciate a prompt review of, and response to, this request. Should you have any questions or require any additional information with regard to this matter, please call the undersigned at 212-504-6342 or, in my absence, Patricia L. McKeogh of this firm, at 212-504-6516. Thank you for your consideration in this regard.

Please stamp the enclosed copy of this letter to acknowledge receipt of this filing and return same in the self-addressed stamped envelope provided for that purpose.

Very truly yours,

Alan M. Parness

Enclosures