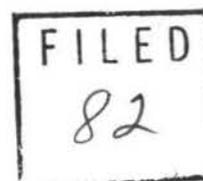


BANKS: (1) Section 362.105.1(13), as enacted by
SECRETARY OF STATE: House Bill No. 1207, Eighty-Third General
SECURITIES: Assembly, Second Regular Session, requires
the licensing and registration of bank
personnel engaged in selling shares of mutual funds established
and maintained by the bank; (2) Section 362.105.1(13), as
enacted by House Bill No. 1207, Eighty-Third General Assembly,
Second Regular Session, requires banks which establish one or
more mutual funds and offer to sell shares of such mutual funds
to register as a broker-dealer with the office of the Commis-
sioner of Securities, to consent to supervision and inspection
by that office, and to subject themselves to the continuing
jurisdiction of the Commissioner of Securities; and (3) Section
362.105.1(13), as enacted by House Bill No. 1207, Eighty-Third
General Assembly, Second Regular Session, does not affect the
ability of the Commissioner of Securities to enforce his
interpretation of Chapter 409, RSMo, requiring bank sales
personnel who engage in activities other than ministerial duties
in connection with the purchase and sale of investment
securities to be registered as agents of a registered broker-
dealer.

June 24, 1986

OPINION NO. 82-86

The Honorable Joseph L. Driskill
Representative, District 154
Post Office Box 412
Doniphan, Missouri 63935



Dear Representative Driskill:

This opinion is in response to your questions asking:

(1) Does § 362.105(13) require licensing and registration of bank sales personnel who purchase and sell investment securities for the account of customers?

(2) Does § 362.105(13) require banks which purchase and sell investment securities for the account of customers to register as a broker-dealer with the office of the Commissioner of Securities and consent to supervision and inspection by that office and be subject to the continuing jurisdiction of that office?

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(3) Does § 362.105(13) allow the Commissioner of Securities to enforce that office's prior position that bank sales personnel who engage in activities other than ministerial duties in connection with the purchase and sale of investment securities be registered as agents of a registered broker-dealer?

Background

Section 409.201(a), RSMo 1978, makes it unlawful for a person to transact business in this state as a broker-dealer or an agent unless such person is appropriately registered.

Section 409.401(b) and (c), RSMo 1978, defines the terms "agent" and "broker-dealer" as follows:

409.401. Definitions. -- When used in this act, unless the context otherwise requires:

* * *

(b) "Agent" means any individual (including an individual who is a broker-dealer, a partner, officer or director of a broker-dealer, or a person occupying a similar status or performing similar functions) who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. ...

(c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (1) an agent (but an individual who is a broker-dealer may also be an agent), (2) an issuer, (3) a bank, savings institution, or trust company ...

(Emphasis added.)

Chapter 409, RSMo, contains no definition of the term "bank" as used in that chapter.

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15 U.S.C. Section 78c(a)(4) and (5) define the terms "broker" and "dealer" for purposes of the Securities Exchange Act of 1934 to exclude "banks", unless the context otherwise requires. On July 1, 1985, the Securities and Exchange Commission finalized its Rule 3b-9, 17 C.F.R. Section 240.3b-9, 50 Fed. Reg. 28394 (July 12, 1985), defining the contexts in which "banks" would be considered to be acting as a broker-dealer under the Securities Exchange Act of 1934.

In October 1984, the Missouri Commissioner of Securities took the position, in his Monthly Securities Bulletin, that "if a bank employee is doing anything other than pointing out a toll-free telephone or providing new account forms with a mail drop for such forms, that bank employee must be registered as an agent of a registered broker-dealer."

House Bill No. 1207

House Bill No. 1207, Eighty-Third General Assembly, Second Regular Session, enacted Section 362.105.1(13), which states:

Every bank and trust company created under the laws of this state may for a fee or other consideration, directly or through a subsidiary company, and upon complying with any applicable licensing statute:

* * *

(13) Purchase and sell investment securities, without recourse, solely upon order and for the account of customers; and establish and maintain one or more mutual funds and offer to the public shares or participations therein. Any bank which engages in such activity shall comply with all provisions of chapter 409, RSMo, regarding the licensing and registration of sales personnel for mutual funds so offered, provided that such banks shall register as a broker-dealer with the office of the commissioner of securities and shall consent to supervision and inspection by that office and shall be subject to the continuing jurisdiction of that office.

(Emphasis added.)

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Your first question asks if Section 362.105.1(13) requires the licensing and registration of bank sales personnel who purchase and sell investment securities for the account of customers. The relevant language in Section 362.105.1(13) states: "Any bank which engages in such activity shall comply with all provisions of chapter 409, RSMo, regarding the licensing and registration of sales personnel for mutual funds so offered," (Emphasis added.) The issue is whether the "activity" referred to is the purchasing and selling of investment securities for others and the establishment of mutual funds and the offering of such mutual fund shares for sale or merely the establishment of mutual funds and the offering of such mutual fund shares for sale.

We believe that the "activity" referred to in Section 362.105.1(13) is the establishment of mutual funds and the offering of such mutual fund shares for sale. This conclusion is supported by the language in Section 362.105.1(13) stating that the provisions of Chapter 409, RSMo, referred to are those "regarding the licensing and registration of sales personnel for mutual funds so offered," (Emphasis added.)

Accordingly, Section 362.105.1(13) requires the licensing and registration of bank personnel engaged in selling shares in mutual funds established and maintained by such banks.

Your second question asks if Section 362.105.1(13) requires banks which purchase and sell investment securities for the account of customers to register as a broker-dealer with the office of the Commissioner of Securities, to consent to supervision and inspection by that office, and to be subject to the continuing jurisdiction of that office. The statutory language imposes the requirements listed in your question upon "such banks". We believe the reference to "such banks" in Section 362.105.1(13) includes only those banks which establish one or more mutual funds and offer their mutual funds' shares for sale. Accordingly, Section 362.105.1(13) requires banks which establish one or more mutual funds and offer their funds' shares to the public to register as a broker-dealer with the office of the Commissioner of Securities, to consent to supervision and inspection by that office, and to be subject to the continuing jurisdiction of that office.

Your third question asks if Section 362.105.1(13) allows the Commissioner of Securities to enforce his position, taken in October of 1984, that bank sales personnel who engage in activities other than ministerial duties in connection with the purchase and sale of investment securities be registered as

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agents of a registered broker-dealer. The introductory language in subsection 1 of Section 362.105 empowers Missouri-chartered banks and trust companies to engage in the enumerated activities "upon complying with any applicable licensing statute: ...". Thus, Section 362.105.1(13) does not exempt banks from any licensing requirements and does not directly affect the regulations in Chapter 409, RSMo.

CONCLUSION

It is the opinion of this office that: (1) Section 362.105.1(13), as enacted by House Bill No. 1207, Eighty-Third General Assembly, Second Regular Session, requires the licensing and registration of bank personnel engaged in selling shares of mutual funds established and maintained by the bank; (2) Section 362.105.1(13), as enacted by House Bill No. 1207, Eighty-Third General Assembly, Second Regular Session, requires banks which establish one or more mutual funds and offer to sell shares of such mutual funds to register as a broker-dealer with the office of the Commissioner of Securities, to consent to supervision and inspection by that office, and to subject themselves to the continuing jurisdiction of the Commissioner of Securities; and (3) Section 362.105.1(13), as enacted by House Bill No. 1207, Eighty-Third General Assembly, Second Regular Session, does not affect the ability of the Commissioner of Securities to enforce his interpretation of Chapter 409, RSMo, requiring bank sales personnel who engage in activities other than ministerial duties in connection with the purchase and sale of investment securities to be registered as agents of a registered broker-dealer.

Very truly yours,


WILLIAM L. WEBSTER
Attorney General