



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

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July 15, 1986 86-2

Mr. Dean C. Arvidson
Baker & Botts
One Shell Plaza
Houston, Texas 77002

Dear Mr. Arvidson:

This is to acknowledge receipt of your letter dated April 22, 1986 in which you ask our views concerning the applicability of certain licensure, disclosure and interest limitations of the Texas Credit Code, Tex. Rev. Civ. Stat. Article 5069-1.01 et seq. relating to your client, a broker-dealer registered under the Federal Securities and Exchange Act of 1934 and The Securities Act of Texas.

So that the parameter of our response will be clearly defined I will quote in its entirety that portion of your letter headed "Facts."

"1. FACTS.

"Broker's customers maintain traditional brokerage accounts with it at various offices in Texas. The brokerage accounts are regular margin accounts and from this account investors may purchase or sell securities by placing cash or securities in the account or through the use of credit, which is subject to the provisions in Regulation T of the Board of Governors of the Federal Reserve System, 12 C.F.R. Sec. 220.1 (1986).

"As a by-product of this investment activity, a program will be offered whereby a customer may deposit securities into a loan account (which is different from a margin account) and receive a committed open-end, revolving line of credit to be issued by Broker in a minimum amount of \$25,001. To draw on the line of credit, a customer may write checks drawn on the account of Broker at a bank. An advance will be made when the Broker's bank, upon instruction from Broker, pays the check. Loans will be payable on demand or at will by the customer without penalty and will be secured solely by a pledge of stocks, bonds, or other securities held in customer's accounts with Broker. The loans may be used for any purpose other than to purchase, carry or trade in securities.



"Interest will be billed to a customer's account on a monthly or other periodic basis. Broker will use either the indicated (weekly) rate ceiling or the annualized or quarterly ceiling under Article 5069-1.04 as its interest rate ceiling index. If the computation is less than 18 percent a year, the ceiling will be 18 percent a year. If the computation is more than 24 percent a year, the ceiling will be 24 percent a year. However, an investor's contractual interest rate will be based on some amount in excess of a call rate. The rate will be adjusted with each change in the index. In addition, the rate will vary during the loan term so that the rate will (i) decrease as the aggregate outstanding balance under the line of credit and other borrowings from Broker increases, (ii) increase if the value of the customer's collateral falls below the amount of the customer's outstanding balance under the line of credit, and (iii) increase if the customer requests that interest charges should be billed rather than added to the amount outstanding under the line of credit."

Based upon the foregoing facts you ask the following questions:

"(a) Does Art. 5069-1.08 exempt open-end secured loans by a registered broker-dealer to customers made for purposes other than the purchase of securities from the licensure or other requirements of Chapter 3 and 15 of the Credit Code?

"(b) Is the interest rate ceiling applicable to the contemplated loans that which is set forth in Art. 5069-1.08, and by reference thereto the alternative rate ceilings set forth in Art. 5069-1.04 (a) and (b)?

"(c) Are the proposed loans subject to any of the consumer disclosure requirements of Art. 5069-1.04(f)-(1), 1.04 (i) of the Credit Code?"

Article 5069-1.08 provides as follows:

"Interest charged by a broker or dealer registered under the Federal Securities and Exchange Act of 1934, as now or hereafter amended, and The Securities Act, as now or hereafter amended, for carrying a debit balance in an account for a customer shall not be subject to any of the limitations or other provisions of Title 79, Revised Civil Statutes of Texas (Article 5069-1, et seq., Vernon's Texas Civil Statutes) as now or hereafter amended, if such debit balance is payable on demand, or at will by the customer without penalty, and is secured by stocks, bonds, or other securities, and if such interest does not exceed the greater of the rate allowed by Article 1.04 of this Title or the rate of 1-1/2 percent per month on the monthly debit balance."

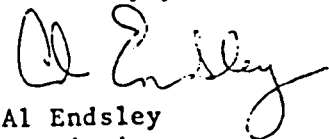
Applying the language of Art. 1.08 to the above facts your client is a broker or dealer registered under the Federal Securities Act of 1934 and The Securities Act of Texas. The customer will receive a committed open-end line of credit payable on demand of the creditor or at the will of the customer without penalty; will be secured by stocks, bonds or other securities; and interest will not exceed that allowed under Art. 1.04.

Since the account constitutes open-end credit available for personal, family or household use, Art. 1.04(n)(5) would require the creditor to be licensed if the lending operation was subject to an applicable chapter of Subtitle 2. Likewise, the loan, being available for personal, family and household use, would normally be subject to the disclosure, interest and fee limitations of Chapters 3, 4, or 15. Art. 1.08 has, however, carved an exception from the normal. We find that its specific wording, ". . . shall not be subject to any of the limitations or other provisions of Title 79 . . ." (except interest limitations of Art. 1.04) effectively eliminates the licensure requirements of Chapter 3 as well as ". . . any of the limitations or other provisions of Title 79. . . ."

Accordingly, in answer to your specific questions, we find that a loan contract structured according to the specified limitation of Art. 1.08 may be made without limitation as to licensing and disclosure requirements of Title 79 and interest rates will be governed by the provisions of Art. 1.04.

As you have indicated, the type of loan account of which you inquire is a by-product of margin accounts subject to the provisions of Regulation T. That regulation requires stocks, bonds, or other securities equal to twice the amount of the loan. As such accounts were not available at the time of the enactment of Art. 1.08 there is no stated prohibition to increasing or decreasing the rate of interest charged the customer contingent upon the outstanding balance of the customer's account or the amount of the customer's collateral securing the account. We do not find that this practice would infringe on the authority of the article so long as the interest rate fluctuation is within the applicable ceiling and the collateral is such as to satisfy the requirement that the debit balance in the customer's account is still sufficiently secured by stocks, bonds, or other securities so as to remain within the purview of Art. 1.08 and not be merely a device to evade regulatory provisions or other limitations of Title 79.

Sincerely yours,



Al Endsley
Commissioner