

KANSAS

OFFICE OF THE STATE BANK COMMISSIONER
CLARENCE W. NORRIS, Bank Commissioner

KATHLEEN SEBELIUS, GOVERNOR

June 30, 2003

Lisa M. Smith, Vice President
Bankers Financial Services Corp.
8800 N.W. 62nd Ave.
P.O. Box 6240
Johnston, IA 50131-6240

RE: Bankers Financial Services Corp.'s indexed certificate of deposit program

Dear Ms. Smith:

You contacted our office by a letter dated May 22, 2003, requesting our agency's opinion on the ability of Kansas state-chartered banks to offer equity-linked indexed certificates of deposit, as described in your letter and accompanying materials. Based on our review of the materials you submitted, the Office of the State Bank Commissioner ("OSBC") provides the following information in response to the three questions you posed.

First, it is our opinion that Kansas state-chartered banks are authorized to sell these types of equity-linked indexed certificates of deposit ("CD"), pursuant to the general authority given to banks in K.S.A. 9-1101, as amended, to receive deposits and pay interest on deposits.

Second, with respect to the over-the-counter ("OTC") options contracts, their purchase by state-chartered banks must be limited to purchases as a non-speculative hedge for the indexed CD program. It is our understanding the banks use these OTC equity options to hedge interest rate risk associated with the CD. The OTC options match the term of the CDs and provide for payment of the same appreciation in value of the Dow Jones Industrial Average that the bank is obligated to pay the CD purchaser. The purchase of the OTC options as a hedging vehicle in this context is deemed incidental to the business of banking. No provision in the Kansas Banking Code would appear to allow a state bank to simply purchase such OTC options contracts as an investment for its own account.

Third, the OSBC has not developed any general policy statement concerning equity-linked certificates of deposits, but instead has chosen to review each product individually and provide a response based on that review. An important issue for banks that are considering offering such products is the need to provide adequate disclosures to depositors. While this is the case for all products offered by banks, this product would seem to have greater potential for customer confusion, as its features are non-traditional. In addition, a bank

Lisa M. Smith
June 30, 2003
Page 2

must have the expertise to understand the risks and accounting issues associated with offering such products. The OSBC would expect any bank that chooses to offer these products to develop policies and procedures that both set out how the product will be promoted to the public and how the bank will evaluate the credit risk associated with the OTC option seller, Bankers Financial Services Corp., and its escrow agent, The Bank of New York.

Finally, please be advised this letter should not be construed as an endorsement of your particular product, nor should it be indiscriminately assumed that we believe the program to be suitable for all Kansas banks or their depositors.

Sincerely,

A handwritten signature in black ink that reads "Sonya Allen". The signature is written in a cursive, flowing style.

Sonya Allen
General Counsel

SLA:sa

File: L