



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

January 8, 1997

Raymond S. Sczudlo, Esq.
Weil, Gotshal & Manges LLP
1615 L Street, N.W.
Washington, D.C. 20036

Dear Mr. Sczudlo:

This is in response to your letter regarding the acquisition of Heine Securities Corporation, Inc., Short Hills, New Jersey ("Heine"), by Franklin Resources, Inc., San Mateo, California ("FRI"). FRI is the parent of Franklin Bank, San Mateo, California, a state-chartered, nonmember depository institution that became a "bank" for purposes of the Bank Holding Company ("BHC") Act upon the enactment of the Competitive Equality in Banking Act of 1987 ("CEBA"). Accordingly, FRI may retain its ownership of Franklin Bank and not be treated as a bank holding company only if FRI and Franklin Bank observe the limitations set forth in section 4(f) of the BHC Act. See 12 U.S.C. § 1843(f). One of these limitations prohibits FRI from acquiring control of more than 5 percent of the shares of an additional bank or savings association. Id. at § 1843(f)(2)(A)(ii). CEBA provides, however, that shares held as a "bona fide fiduciary" are not subject to this 5-percent limitation. Id. at § 1843(f)(2)(A)(ii)(I).

Heine previously acted as investment adviser to Mutual Series Fund, Inc. ("Fund"), a registered open-end investment company. It appears that FRI acquired control of the Fund following the acquisition of Heine by FRI.^{1/} The Fund owns 9.9 percent of the voting shares of Monarch Bancorp,

^{1/} FRI now serves as investment adviser and administrator for the Fund, and maintains a variety of director and officer interlocks with the Fund. Such relationships could be deemed to give FRI control of the Fund for purposes of the BHC Act. See The Governor and Company of the Bank of Ireland, 82 Federal Reserve Bulletin 1129 (1996); Mellon Bank Corporation, 79 Federal Reserve Bulletin 1129 (1996). (continued...)

which in turn owns all the voting shares of Monarch Bank, both of Laguna Niguel, California. Accordingly, it appears that FRI acquired control of more than 5 percent of the shares of an additional bank upon its acquisition of Heine. FRI asserts that the Fund holds the Monarch Bancorp shares as a "bona fide fiduciary" within the meaning of CEBA.

The House Conference Report accompanying CEBA provides that the bona fide fiduciary exemption in section 4(f)(2)(A)(ii):

is intended to cover situations in which . . . an SEC-registered diversified investment company within the meaning of Section 5(b)(1) of the Investment Company Act of 1940 managed by an investment adviser affiliated with a company makes passive investments in the ordinary course of business and thereby does not acquire 'control' as determined under the Bank Holding Company Act or the Change in Bank Control Act.^{2/}

The Fund is a diversified investment company that is registered with the Securities and Exchange Commission. Furthermore, the Fund's 9.9 percent ownership interest in Monarch Bancorp appears to be passive and does not constitute a controlling interest for purposes of the BHC Act or the Change in Bank Control ("CIBC") Act. Accordingly, the Board believes that the Fund holds its 9.9 percent interest in Monarch Bancorp as a bona fide fiduciary within the meaning of section 4(f)(2)(A)(ii)(I) of the BHC Act, and that the Fund's ownership of such shares would not cause FRI or Franklin Bank to violate the restriction set forth in section 4(f)(2)(A)(ii) of the BHC Act.

This opinion is based expressly on the facts and circumstances of this case as they have been described to Board staff, and any change in these

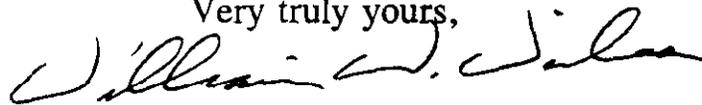
^{1/}(...continued)

Reserve Bulletin 626 (1993). Thus, for purposes of responding to your letter, we have assumed that FRI acquired control of the Fund upon consummation of FRI's acquisition of Heine.

^{2/} See House Conf. Rep. 261, 100th Cong., 1st Sess. 124 (1987), reprinted in 1987 United States Code Cong. and Admin. News 588, 593.

facts or circumstances may result in a different opinion. In particular, the legislative history of CEBA provides that the bona fide fiduciary exemption is available only with respect to passive investments that do not result in the acquiring company obtaining control of a bank or savings association for purposes of the BHC Act or the CIBC Act. Accordingly, the bona fide fiduciary exemption in section 4(f)(2)(A)(ii)(I) of the BHC Act would not be available if FRI, directly or indirectly, acquires control of a bank or savings association within the meaning of the BHC Act or CIBC Act.^{3/} In addition, the bona fide fiduciary exemption would not be available with respect to any investment by FRI in a bank or savings association if FRI or any of its affiliates has any officer, director, or employee interlocks with the bank or savings association.^{4/}

Very truly yours,



William W. Wiles
Secretary of the Board

^{3/} See 12 C.F.R. §§ 225.2(e), 225.31(d)(2), and 225.41(b). In particular, the Board notes that FRI would be deemed to control a bank or savings association under the CIBC Act if it acquires control of 10 percent or more of any class of voting securities of the bank or savings association, and (i) FRI thereby becomes the largest shareholder of such class of the institution's securities, or (ii) the bank or savings association has any class of securities registered under section 12 of the Securities Exchange Act of 1934. See 12 C.F.R. § 225.41(b)(2).

^{4/} See House Conf. Rep. 261, 100th Cong., 1st Sess. 124, reprinted in 1987 United States Code Cong. and Admin. News 588, 593 ("Interlocking officer, director, or employee relationships between the . . . investment adviser and its affiliates, and the bank or insured institution in which the passive investment is made, would not be permitted.").