

Salvatore, Peter

From: Leitzel, Elaine
Sent: Wednesday, May 29, 2002 4:12 PM
To: Fitzwater, Lynne; Salvatore, Peter
Subject: FW: Pa. Code 148a - Late

Here is a comment on Chapter 148 received today (after the close of the public comment period). We can discuss it on Friday.

-----Original Message-----

From: Johnson, Stephen
Sent: Wednesday, May 29, 2002 3:16 PM
To: Delbiondo, David; Leitzel, Elaine
Subject: FW: Pa. Code 148a

FYI

-----Original Message-----

From: Longworth, Kurt [mailto:longworthkd@agedwards.com]
Sent: Wednesday, May 29, 2002 2:41 PM
To: 'stjohnson@state.pa.us'
Subject: Pa. Code 148a

Mr. Stephen Johnson,

A.G. Edwards Trust Company FSB currently serves as custodian for several Pennsylvania Insurance Companies. One of our customers shared with us a draft of the proposed Pa. 148 a. to make us aware of the proposed new requirements for custodians. Jack Kelly of our affiliate broker dealer, A.G Edwards & Sons had a conversation with you on the to qualify as a custodian. Jack suggested it might be good to share our observations with you as they may be similar to observations you might expect from other current custodians of insurance company assets.

The first concern centers on who can qualify to serve as a custodian. Both the NAIC model language and the proposed Pa. 148a language rule out a Federal Savings Bank (thrift) from qualifying as custodian unless that thrift is a member of the Federal Reserve System. The requirements to serve as a Custodian listed in 148 a.1. are:

- (i) A National bank , state bank or trust company that is :
- A. Adequately capitalized as determined by the standards adopted by United States banking regulators.
 - B. Either regulated by state banking laws or a member of the Federal Reserve System
 - C. Legally qualified to accept custody of securities as required under 148a.3

A.G. Edwards Trust Company FSB is a Federal Savings Bank with adequate capitalization. We are not a member of the Federal Reserve System but use an agent that is qualified per the definition of agent in 148a.1. We are regulated under Federal law by the Office of Thrift Supervision. On review of the requirements of a custodian we will be able to provide the assurances necessary under the proposed new rule and yet would not qualify to act as custodian because of the current definition.

05/31/2002

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COMMISSION
2002 JUN -14 PM 9:31
OFFICE OF THE ATTORNEY GENERAL

If the language in i and B were modified slightly as follows we would then qualify:

(i) A National bank , Federal Savings bank , State Bank or trust company that is :

B) Regulated by either federal or state banking laws , or a member of the Federal Reserve System.

There is also some language in the proposed rules that may create problems for other custodians and mutual fund companies that Jack thought we should share with you. The first one is in section 148a.3. under 3(i). This language requires the custodian to enter into a written agreement with the agent whereby the securities will be held as required under this chapter. In our current relationship with Pa insurance companies we do use an agent for securities that clear through the Federal Reserve Book-Entry System. We have an existing agreement with this agent to hold our securities in the Federal Reserve System. Is that document sufficient or does the proposed new rule contemplate that a custodian would enter into a new written agreement with agents that is specific to the insurance company they serve? I am not sure if an agent would enter into an account specific agreement or not , but we will raise the question with our agent. I would suspect other custodians may have the same question.

In that same section 148a.3 under 14(ii) there is language that directs that the custodian shall provide if requested by an authorized party a report on the custodians system of internal controls prepared by an outside auditor retained by the custodian. The audit department of A.G. Edwards(AGE),an outside entity form the Trust company, performs a thorough audit of the Trust company's internal controls on an annual basis. We have had similar requests by large retirement plans governed by ERISA and have found that a statement from the AGE auditors on internal controls has satisfied these client requests. Would such a statement meet the requirement outlined in the new rule ?

Finally under 148a.4 dealing with investment company securities there is language in (1) that requires a written report from the mutual fund company at least monthly. This may present a problem in that most mutual fund companies do not issue monthly statements unless there is activity in the account. In our current client relationships we reflect the mutual fund positions on our statements which are sent out monthly and we hope that this is satisfactory to meet the reporting concerns. At a minimum I believe the monthly reporting requirements by the investment company can't be met without some additional action being taken by the mutual fund company to code the account for a different statement delivery cycle. We have not made such a request in the past but certainly would be willing to do some leg work on this issue if it would be helpful.

We have responded as quickly as possible on the important proposed changes to rule 148. We have provided specific language where it was possible however, there are still questions that we need your input as mentioned above.

We look forward to serving the Fraternal market. As such, we would appreciate your feedback on these observations.

Kurt Longworth / Chief Operating Officer / A.G. Edwards Trust Company FSB
800-876-8543 or e-mail at kurt.longworth@agedwards.com

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ORIGINAL: 2263

IRRC

From: Miller, Sarah E.
Sent: Thursday, May 30, 2002 7:36 AM
To: IRRC; Sandusky, Richard M.; Schalles, Scott R.; Wyatte, Mary S.
Subject: FW: Pa. Code 148a - Late Comment

From Pete..... Late Comment.

-----Original Message-----

From: Salvatore, Peter [mailto:psalvatore@state.pa.us]
Sent: Wednesday, May 29, 2002 4:17 PM
To: Miller, Sarah E.
Subject: FW: Pa. Code 148a - Late Comment

Sarah,

I just got this. This is the LATE comment that I mentioned on the phone. We will discuss it on Friday if you wish.

Pete

-----Original Message-----

From: Leitzel, Elaine
Sent: Wednesday, May 29, 2002 4:12 PM
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5/30/2002

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