

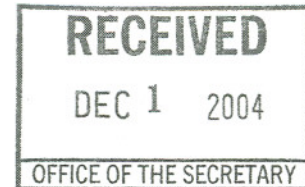


THE BOLDUC LAW FIRM, PLLC

119

COPY

November 30, 2004



Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: Proposed Regulation B Comment Letter File No. S7-26-04

Dear Mr. Katz:

I am a securities attorney who represents investors against banks and broker-dealers. Prior to becoming an attorney, I worked for two large banks, managing Foreign Exchange Trading and Foreign Bond Portfolio activity. Recently I have encountered several situations that I thought might be of interest to the SEC as it considers its final ruling on Regulation B.

Apparently in some cases, bank trust departments are using Agency Agreements to circumvent NASD and SEC rules. (Please see attached redacted Agency Agreement.) The attached Agency Agreement attempts to exonerate the bank from any diminution of value in the investment account. It also uses a forum selection clause. I believe that this situation exemplifies some of the issues that are likely to arise should the SEC endorse a blanket exception for bank trust departments with respect to its final position on Regulation B.

Recently, I filed a case in Federal Court on behalf of my client, a real-estate developer. My client had a long-term relationship with his bank. He required an additional loan to start a mixed-use real estate project. At the time he approached his bank for a new loan, the developer had roughly \$1,000,000 invested in CDs which served as collateral for prior outstanding loans. He asked the bank for an additional loan of approximately \$1,200,000. His real estate lending officer referred him to a trust officer. The trust officer told my client that the bank would not be willing to extend him further credit unless he opened up an investment account. The trust officer at the time was a registered representative (series 7 and series 63) for the bank's broker-dealer. My client, who was 60 years old at the time and had no financial markets investment experience, thought that he was opening a standard securities account with a broker-dealer. The trust officer

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required my client to sign an Investment Agency Agreement (please see attached Agreement previously referenced) and re-directed his collateral funds from CDs to an Investment Advisory Account. These Agency Agreements seem to fly in the face of Section 29 (Validity of Contacts) under the Securities Exchange Act of 1934, as well as Section 215 of the Investment Advisers Act of 1940.


At all times the trust officer was acting as an investment advisor representative. However, he failed to stay abreast of the developer's business situation, which began to erode largely due to the negative economic environment fostered by the tragic events of 9/11/01. Clearly my client's funds were invested unsuitably in several respects. If the account had been opened with a broker-dealer, NASD rules would have required due diligence (suitability) as well as other investor protections. My client sustained significant losses in the investment account which ultimately lead to the collapse of his real estate projects. Theoretically, NASD rule 2040 (selling away) should apply to the bank broker-dealer who had a duty to supervise. However, the Defendant is trying to argue that the broker-dealer is not a party to the Agency Agreement. Regrettably, the outcome of this case will be decided by a Federal District Court and not by the rules established by the SEC or NASD.

In another recent case that I handled, an 82-year-old woman came to the bank and wanted to have her deceased husband's name removed from approximately \$1,500,000 worth of stock certificates. The bank referred her to the trust department. The trust department opened up an investment account and required her to sign an Agency Agreement. The trust department held the securities for six months and charged her \$18,000 in fees for its services. A typical broker-dealer could have delivered the same services in two weeks, for about \$500. This type of abuse, I suspect, is not an anomaly. If a goal of the SEC is to ensure that the investors are provided the same protections with respect to receiving the same service from a broker-dealer or a bank, then, I believe a blanket exception for bank trust departments is inconsistent with that goal.

Finally, one bank has pushed the envelope so far as to have all of trust sales personnel report to the head of the bank broker-dealer. This individual previously worked for NASD and views this supervising and accountability scheme as synergistic and not as a conflict. He has been quoted as saying "All of trust sales, securities, and insurance sales people report to me..... because of that our officers are working very well together. We have no conflicts, and there is tremendous referral back and forth. I don't know of any organization anywhere that has all of these people in the same place." (See attached article that appeared in *Bank Investment Consultant* in October 2001) Jack Grubman, the analyst from Salomon Smith Barney, Inc., flaunted the traditional "Chinese wall" between research and investment banking functions at the large Wall Street firm when he stated "what used to be a conflict is now a synergy". We all are well aware of the ending of that situation. The SEC has an opportunity to ensure that this type of history does not repeat itself.

"Congress did not intend the trust exception to be used to conduct a securities brokerage operation in the bank trust department without the appropriate investor protections provided under federal securities law." (See 66 FR 27760.) This problem is real and I believe that the SEC should do whatever it can to protect investors by closing potential compliance loopholes.

Sincerely,

A handwritten signature in dark ink, appearing to read "D.W. Bolduc", with a stylized flourish at the end.

Darryll Bolduc

Enclosures (2)

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As a Former NASD Regulator, SouthTrust's Porter is a Tiger In Building Bank Brokerages

Years before Gramm-Leach-Bliley was passed, John D. Porter, ceo of SouthTrust's securities group, found a way around Glass-Steagall to Save a Brokerage and Forge his reputation as an innovator, not a Salvager.

By Gregory DL Morris

f SouthTrust Corp. were as big as Citicorp, then John D. Porter might have won some of the credit for initiating the repeal of the Glass-Steagall Act years earlier than Sandy Weill's purchase of Travelers, which all but forced Congress into passing the Gramm-Leach-Bliley Act. Instead Porter had to be content with being given the chairmanship of the brokerage division that SouthTrust, of Birmingham, AL, hired him to save. Since then he has been able to apply his experience and innovative approach to expansion, rather than salvage.

In 1995 SouthTrust had two brokerage operations, a small retail operation, SouthTrust Investments (STI), which was not doing well, and an old-fashioned bond shop, SouthTrust Securities (STS), which was doing fine, but had not grown beyond municipal underwriting. SouthTrust hired Porter from Deposit Guarantee in Jackson, MS, where he had spent three years developing a retail brokerage.

STS had been around since 1982, but STI had only been in business since 1992, the same year Porter started a brokerage business at Deposit Guarantee. His startup had done well, but it is easier beginning with a puppy—his new shelter pet was not in good shape. "STI, which operated under Federal Reserve regulation Section 16, was very unprofitable with few reps and limited offerings," says Porter.

The most obvious solution—to fold STI into STS—was foiled by the legal restriction that STS was operating under the Section 20 regulation, which prohibited its employees from selling some investments, including annuities. Porter's innovation was to bring in a third-party marketer—Independent Financial, part of Liberty Financial—and get dual licensing for all of his reps. They all remained solely STS employees, however, and when GLB was passed, Porter was able to bring all the licenses in-house and become independent of Independent.

"It was critical to operate out of the Section 20 business for the purposes of our underwriting," says Porter. "So we got all the approvals and exemptions from the regulators and were able to consolidate all the back-office operations. We were the first ever to do something like that. You can call it innovative, but it just made good business sense."

It also worked. With the title of CEO over the retail group, operations and compliance, Porter worked without an office or a staff, and was rewarded in 1996 with the title of chairman and CEO of the expanded STS, as well as a permanent place to sit. He is now responsible for all brokerage and retail investment sales, but also all capital markets, institutional sales and trust sales. "Management of trust money is still the responsibility of the trust department, but gathering of new assets is my responsibility," says Porter.

Not too shabby for a fellow who graduated from Auburn University with a degree in accounting, who thought he wanted to be a CPA but started his finance career a regulator. "In the 1970s I was an examiner in Atlanta with the NASD," says Porter. "It was a great job," Porter recalls. "I was young and single, and my territory was Florida. Life was great. I stayed with that until 1982, when I was hired by First Mutual Savings & Loan of Pensacola, FL to start a brokerage program. ...And this was right on the beach."

There were no S&L brokerages at the time, so Porter was involved in the formation of Invest Financial, which was started in Tampa and owned by a coalition of S&Ls. Porter did not know it at the time, but the pattern for the rest of his professional life had been set: building bank brokerages with a compliance-centered basic execution, and a surprising flare for innovation.

Two things changed in 1984, however, Porter got married and the S&L was being sold. His wife, Claudia, was an examiner with the NASD in Atlanta at the time, so he took a senior position with Financial Services Corp., which was then an independent broker-dealer. The company went through several acquisitions and sales, bringing Porter to Deposit Guarantee in 1991. Today it is owned by SunAmerica.

Since joining SouthTrust, Porter has watched the bank more than double in size from \$17 billion in assets to \$44 billion. STS has 300 employees and just under \$3 billion under administration. Porter has established four operating divisions: retail, which includes all 120 of his Series 7 brokers; discount, which includes Internet trading, and has just support staff; capital markets, which has about 20 investment professionals; and institutional sales, which also has about 20 reps.

Outside of STS, the bank also has an insurance group, a private bank and a trust department. Porter, together with the heads of trust and private banking provide the leadership for SouthTrust's wealth-management program. "All of the trust, sales, securities and insurance sales people report to me," says Porter. "Because of that, our officers are working very well together. We have no conflicts, and there is tremendous referral back and forth. I don't know of any organization anywhere that has all of these people in the same place."

That is possible, he says, partly because of the size and scale of SouthTrust, but also because his background in operations and compliance gives him the expertise to streamline operations and sell as much as possible without running afoul of regulations. It also makes him very picky when it comes to hiring new reps.

"I would like to add maybe five people to the retail group by the end of the year, and see it grow to 150 by next summer," says Porter. "But it is a very slow process. We are very conscious of the quality of the people we get. I have found that if you get experienced people, you get few complaints and fewer compliance issues."

In the meantime, STS is expanding sales through other channels, including the platform. In a two-year-old program, SouthTrust now has 300 platform staff licensed to sell single-premium fixed annuities—an idea innovator Porter was not too proud to adopt from First Union.

He keeps his retail reps involved as team leaders and trainers for the platform sales, keeps them happy with cross compensation; and keeps them productive with more sophisticated products of their own to sell. The latest is a proprietary annuity based on a Nationwide chassis.

Beyond job satisfaction, Porter keeps himself happy and productive with plenty of family recreation. He and his wife are learning to play golf together, building on their long partnership competing in mixed-doubles tennis tournaments. The couple has a son J.D. Jr., 22, a daughter Nellie, 15, and a son, Steven, 13.

[Home](#) | [Return to Back Issues](#) | [Return to Top](#)

Bank Investment Consultant, One State Street Plaza, 27th Floor
New York, NY 10004 (212) 803-8200

INVESTMENT AGENCY AGREEMENT

THIS AGREEMENT, made and entered into by and between

NAME: _____

ADDRESS: _____

CITY & STATE: _____

SOCIAL SECURITY NUMBER: _____

hereinafter called "Principal" and _____, hereinafter called "Agent" on this ____29th_ day of July _____, 20_01_____.

Principal is the owner of the securities and any other assets listed in Schedule "A" attached hereto and made a part hereof, and delivers to Agent said securities and assets to be held by Agent upon the terms and conditions contained herein; and

Agent acknowledges receipt of said property, and agrees to perform the duties imposed under the terms and conditions set forth in this Agreement; and

All securities and other assets listed in Schedule "A", as well as any other additional assets which may hereafter be delivered to and accepted by Agent, and any cash, securities or other assets collected, purchased, received or acquired by Agent hereunder for the account of Principal shall be referred to herein as the "Investment Fund", and held in an "Investment Fund Account" in the name of Principal; and

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, it is agreed by and between Principal and Agent as follows:

1. **DUTIES OF AGENT.** Principal hereby employs Agent to supervise and administer the Investment Fund subject to the terms and conditions herein set forth, and Agent hereby accepts said employment, to render the following services with respect to said Investment Fund:

(a) To hold all assets received hereunder in safekeeping and under its control until otherwise directed in writing by Principal, or to deliver any security to a depository or clearing agency selected by Agent, to be held in and credited to Agent's account;

(b) Investment Management: Principal hereby elects one of the investment option services described below (initial one option):

X Discretionary. Agent shall exercise general investment supervision over the Investment Fund Account. Agent shall periodically review in light of the Principal's investment objective the account; and, upon the basis of such review and in the Agent's sole discretion, retain, purchase, sell, exchange, invest or reinvest the funds and securities of this Investment Fund in such common or preferred stocks, mutual fund shares (including such mutual funds as are advised by _____), bonds, bills, notes, debentures, cash or money market accounts or other securities (including the retention, sale or purchase of securities of the Agent Bank) as the Agent may deem advisable from time to time; and, in order to effectuate such investment or reinvestment, to proceed to place orders for the

purchase or sale of securities for Principal's account; Principal agrees that Agent shall not be responsible for any loss or decline in value of the Investment Fund Account resulting from investment transactions made by Agent in good faith. *Agent has full authority to purchase or sell assets held in the Account according to the investment objectives of the Investment Fund Account without prior consent of Principal.*

_____ Advisory. When deemed appropriate by Agent in light of Principal's investment objectives, Agent shall make recommendations to Principal concerning purchases and sales of, and other changes in the Account. Principal agrees that Agent shall not be responsible for any loss or decline in value of the Account resulting from recommendations made by Agent in good faith. *Agent has no authority to purchase or sell assets held in the Account without prior consent of Principal.*

(c) No purchase orders will be placed or settlements consummated unless the necessary collected funds of Principal are in the possession of Agent, and no sale orders will be placed or settlements consummated unless the securities to be sold are held by Agent and are in deliverable form;

(d) To collect and receive, as and when due and payable, the dividends, interest, rents or other income with respect to the Investment Fund, and to credit the same when received to this Investment Fund Account;

(e) To collect and receive the principal amount of all assets held hereunder as and when the same may mature, be redeemed, or be sold, and to credit such proceeds when received to this Investment Fund Account; and in furtherance thereof, Agent is authorized to surrender for payment all maturing obligations and those called for redemption;

(f) To use its best efforts to collect, on a timely basis, the income and principal payments referred to in subparagraphs (d) and (e) above, as and when the same become due, but Agent assumes no responsibility for the failure of any obligor to remit any such income or principal payment in a timely manner, and Agent shall not be obligated to institute or participate in any legal proceeding relating to the collection thereof;

(g) To invest on a timely basis all cash received, either in a money market or cash management account established and maintained by Agent (or by an affiliate or holding company thereof), particularly including but not limited to the U.S. Treasury Money Market Fund, or in one or more money market funds which are offered by third party vendors for investment through a prospectus; and in such latter event it is understood and agreed that Agent may be compensated separately by the issuer of such money market fund(s) for the Agent's performance of certain administrative functions on behalf of such fund(s), all as set forth in the prospectus relating thereto;

(h) To exercise the same degree of care and protection with respect to the Investment Fund as Agent exercises with respect to its own assets of similar character, and to insure the Investment Fund against loss by reason of burglary, robbery, or defalcation in the same manner and to the same extent as such coverage is provided with respect to assets owned and held by Agent in its corporate capacity as a fiduciary;

(i) Disbursement of Income. To transfer to Principal at regular intervals the income received by Agent for the account of the Principal, unless otherwise instructed to the contrary by prior written notice from the Principal;

(j) Disbursement of Principal. To transfer to Principal, or to such other parties as Principal may designate, any cash and/or other assets held hereunder by Agent, but only upon the Agent's prior receipt of written instructions from Principal;

(k) Accounting. To keep accurate books of account of all transactions with respect to the Investment Fund, and to furnish to Principal on a X quarterly or _____ monthly basis, a written statement of all receipts, disbursements and capital transactions occurring during the period covered by such statement as well as a complete listing and

inventory of the Investment Fund;

2. POWERS OF AGENT. In order to facilitate and expedite the performance of the duties accepted by Agent hereunder, Principal hereby grants to Agent the power and authority to do any and all things necessary or desirable to effectually perform such duties. It is hereby agreed and understood by Agent and Principal that such powers shall include, but will not necessarily be limited to, the following:

(a) To exercise general investment management of the Investment Fund consistent with the election under Paragraph 1(b);

(b) To execute as Agent, in the Principal's name, place and stead, any declarations, affidavits, and certificates of ownership now or hereafter required in collecting income or principal payments; and to execute any instruments necessary to accomplish the assignment or transfer of property held hereunder by Agent;

(c) To enter on Agent's books all assets held hereunder at such cost basis or other amount and acquisition date as shall be furnished to Agent by Principal, or if no such amounts are furnished, then at face value or nominal value in the discretion of Agent, and to enter at the cost thereof all assets subsequently purchased by Agent;

(d) To hold securities subject to registration either in the name of the Principal, in the name of the Agent, in the name of a nominee, or in such form that title will pass by delivery; provided, however, that no such registration or holding shall relieve the Agent of its responsibility for the safe custody of such securities and, at all times, they shall be shown on the books of the Agent as the property of the Principal;

(e) To retain, purchase and sell any stocks, bonds or other securities for the account of this Investment Fund by and through such investment or brokerage firms as Agent may select, particularly including, but not limited to, _____; Funds Management Group, and the Bank's subsidiary, _____, or other such successor organizations. Standard commissions then in effect or negotiated from time to time shall apply to all of these transactions including transactions through said Funds Management Group and _____ and any _____ Bank affiliate.

(f) Except as specifically provided in this Agreement to the contrary with respect to prior written notice, the Agent shall, with respect to all matters subject to the control of Principal, be entitled to rely upon and follow any verbal instructions given to Agent by Principal, which instructions may, at Agent's option, thereafter be confirmed in writing by Agent as soon as reasonably possible after the Principal's issuance of such verbal instructions.

(g) Agent shall at all times be authorized and empowered to act in accordance with the terms of this Agreement, without liability, upon its receipt of written instructions from any person acting as attorney-in-fact for Principal under a general power of attorney, and regardless of whether such instructions relate to the amendment or termination of this Agreement, the identity of the payee of the income or corpus held hereunder, or any other matter subject to the control of Principal under the terms of this Agreement; and such instructions from the attorney-in-fact shall be deemed conclusively to be instructions from the Principal.

(h) Agent may cause to be made available through a separate Vendor, mutual funds or a family of mutual funds for purchase in the Investment Fund Account. For the performance of certain administrative functions the Agent may be compensated by the Vendor from the Vendor's funds as disclosed in the mutual fund prospectus.

(i) Agent may use such mutual funds as are advised by Agent and may be compensated for the management thereof as disclosed in the mutual fund prospectus.

3. EXCLUDED DUTIES OF AGENT. It is understood and agreed that Agent shall be under no duty to take any action with respect to the Investment Fund other than those hereinabove specified, unless such duty is agreed to in

writing by Agent. Specifically, the following actions with respect to all securities held hereunder are excluded from the duties of Agent:

- (a) To vote any securities held hereunder by Agent, and execute proxies for such purpose;
- (b) To approve, oppose, adopt, or join in any plan or agreement of reorganization, consolidation, merger, sale of assets, or any other action of a corporation the securities of which shall constitute a part of this Investment Fund Account; and to effectuate an exchange of shares in the event of any such corporate reorganization, consolidation or merger;
- (c) To exercise subscription and other rights, powers, options, conversion privileges, or any other powers incidental to the ownership of the securities held hereunder.

Agent may, in its sole discretion, perform any one or more of the above actions if it deems such action appropriate under the circumstances, and in the exercise of any such discretion, Agent shall be vested with the power to perform such action.

4. INVESTMENT OBJECTIVE. The Principal shall disclose to the Agent his/her investment goals and objectives in writing. The Principal shall notify the Agent in writing of any changes in his/her investment goals and objectives which may occur from time to time. The Principal acknowledges that all services performed by the Agent under this Agreement shall be in reliance on the Principal's goals and objectives as communicated in writing to the Agent from time to time by the Principal.

5. SHAREHOLDERS' COMMUNICATIONS. By execution of this Agreement, Principal does hereby signify that Agent is not authorized to release the Principal's name, address or securities position to the companies whose securities are held hereunder. Furthermore, the Agent shall have no responsibility to deliver or cause to be delivered to Principal any proxy solicitation material, notices of shareholders' meetings, current prospectuses or the annual or any other regular reports to the shareholders, or to inform the Principal of any such proxy material, notices, and/or reports. Notwithstanding the foregoing, however, by separate letter of instructions to Agent, Principal at any time may (1) authorize the Agent to release the Principal's name, address and securities position to the companies whose securities are held hereunder, and/or (2) direct Agent to deliver or cause to be delivered to Principal all such proxy material, notices and/or reports. In such latter event, Agent shall endeavor to forward to Principal all such proxy material, notices and/or reports relating to the securities held hereunder, and Principal may thereupon directly vote such proxies and take all other actions deemed appropriate, in Principal's sole discretion.

6. WITHDRAWAL, AMENDMENT OR TERMINATION. Any and all assets in the Investment Fund may be withdrawn from the operation of this Agreement by Principal at any time upon a written order or receipt signed by Principal. This Agreement may be amended at any time by letter or other written instrument signed by Principal and Agent in such manner as they may mutually agree, and it may be terminated by either Principal or by Agent at any time upon thirty (30) days prior written notice delivered to the other party hereto, whereupon the entire Investment Fund held hereunder by Agent, including any income that may be received subsequent to the date of termination, and after payment to Agent of all unpaid fees and costs, shall be transferred, paid over and delivered to Principal, or to such other parties as the Principal shall designate.

7. NOTIFICATION. Any written notification to be delivered to Principal under the terms of this Agreement shall be deemed to have been sufficiently given by Agent if it is either hand delivered or mailed to Principal at the address designated on page 1 above, transmitted by facsimile or electronic mail, or at such other address as Principal shall subsequently direct in writing. Any written notification to be delivered to Agent under the terms of this Agreement shall be deemed to have

been sufficiently given by Principal if it is either mailed to

_____, ATTN: _____

_____, or hand delivered to

_____, ATTN: _____

_____, transmitted by facsimile or electronic mail, or at such other address as Agent shall subsequently direct in writing.

8. EXONERATION OF AGENT. In performing the duties hereinabove prescribed, the Agent will serve the Principal's interest with loyalty, but it is hereby expressly agreed and understood that Agent shall not be responsible or liable in any manner or to any extent whatsoever with respect to the matters set forth below; and Principal, on behalf of its heirs, successors and assigns, does hereby hold harmless and indemnify Agent from and against the following:

(a) Any and all loss arising as a result of the depreciation in value of any securities or other property retained, purchased or sold in the Investment Fund, it being acknowledged by the parties hereto (1) that Agent shall not be liable or in any manner responsible for any error of judgment as long as it has acted in good faith and with reasonable care, and (2) that all assets in the Investment Fund are held solely at and for the risk of Principal;

(b) Any and all loss or liability incurred by Agent in acting hereunder after termination of its authority by reason of the Principal's dissolution, or other termination of this Agreement before receipt of actual notice thereof by Agent;

(c) Any and all costs incurred by Agent as a result of its registration of the securities held hereunder in the name of a nominee;

(d) Any and all loss as a result of the act or omission of any broker or other agent selected to purchase or sell securities for the account of Principal, or for any loss as a result of the financial solvency or insolvency of any broker or agent.

9. DEATH OF PRINCIPAL. Upon Principal's death during the term of this Agreement, the Agent's active duties hereunder shall terminate, and the Agent, after payment to itself of all unpaid fees and other costs, shall transfer, pay over and deliver the entire Investment Fund, including any income that may be received subsequent to the date of death, to the duly qualified personal representative(s) of the Principal's estate; and this Agreement shall thereupon terminate. The death of the Principal, however, shall not affect the rights, obligations and liabilities of the parties hereto with respect to transactions initiated or occurring before such date of death.

10. MISCELLANEOUS.

(a) This Agreement shall be construed in accordance with and governed by the laws of the State of North Carolina.

(b) Principal agrees to pay the Agent for its services hereunder an amount equal to the fees provided in the Agent's compensation schedule in effect at the time the services are rendered. Such fees may be charged directly to and debited from this Investment Fund Account, but if there are insufficient funds available to cover such debit, then Principal agrees to remit the fees directly to Agent. Certain additional fees for certain money market funds and/or certain mutual fund shares may be charged and shall be disclosed separately by prospectus or otherwise and Principal hereby waives line item, or any other additional disclosure of these fees.

(c) Other and additional assets acceptable to Agent may be made subject to the terms of this Agreement by delivery of the same to Agent with written instructions to hold and administer the same under the provisions of this Agreement.

(d) Any references in this Agreement to the male gender shall be deemed to include the female gender.

(e) It is not intended by the execution of this Agreement to constitute Agent a trustee, and it shall not have the liabilities or responsibilities of a trustee.

(f) It is understood and agreed that Principal assumes the duty of filing any and all tax reports and returns, as well as full responsibility for the payment of all taxes assessed on or with respect to any property in the Investment Fund, and all taxes due either on the income therefrom or the capital transactions in respect thereof.

11. RESOLUTION OF DISPUTE.

(a) The parties to this Agreement desire to avoid the additional time and expense related to a court proceeding for any disputes arising hereunder if the arbitration agreement in this Section is declared by a court of law to be unenforceable for any reason. Therefore, it is mutually agreed by and between the parties hereto, and for their successors and assigns, that they shall and hereby do waive civil trial of any claim, counterclaim, or third-party claim, including any and all claims of injury or damages, brought by either party against the other arising out of or in any way connected with this Agreement and the relationship which arises herefrom. The parties acknowledge and agree that this waiver is knowingly, freely, and voluntarily given, is desired by all parties, and is in the best interests of all parties.

(b) The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between the parties who have authority to settle the controversy. Either party may give the other party written notice of any dispute not resolved in the normal course of business. Within twenty (20) days after delivery of said notice, both parties shall meet at a mutually acceptable time and place to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within sixty (60) days of the disputing party's notice, or if the parties fail to meet within twenty (20) days, either party may initiate the mediation of the controversy as provided below.

(c) If any dispute has not been resolved by negotiation as provided above, the parties shall endeavor to resolve the dispute by mediation. Unless the parties agree otherwise, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association by a mediator who has the qualifications set forth hereinbelow. The neutral third party will be selected by the mutual consent of the parties to the Agreement. If the parties encounter difficulty in agreeing on a neutral third party they will seek the assistance of the American Arbitration Association (AAA) in the selection process. Unless otherwise agreed upon by the parties, the place of mediation shall be the offices of

(d) Any dispute that has not been resolved by mediation, as provided hereinabove, within sixty (60) days of the initiation of such procedure, shall be finally settled by arbitration conducted expeditiously in accordance with the Commercial Arbitration Rules of the American Arbitration Association by a sole arbitrator; provided, however, that persons eligible to be selected as arbitrators shall be limited to attorneys at law who are on the AAA's Large, Complex Cases Panel; or who have professional credentials similar to the attorneys listed on such AAA panel. If the parties encounter difficulty in agreeing on an arbitrator, they agree that the AAA shall select the arbitrator. Notwithstanding the foregoing, if one party has requested the other party to participate in a non-binding dispute resolution procedure as hereinabove described and the other party has failed to participate therein, the other party may initiate arbitration before the expiration of the above time periods. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. Sections 1-16. The award shall be based upon applicable law and judicial precedent and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be the offices of _____ Bank. The arbitrator is not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any damages in excess of compensatory damages.

(e) The parties shall bear their respective costs in connection with the dispute resolution procedures (non-litigation) described herein, except that the parties shall share equally the fees and expenses of any neutral third party or arbitrator and the costs of any facility used in connection with such dispute resolution procedures.

(f) All negotiations relating to any non-litigated procedure provided herein are confidential and shall be treated as compromise and settlement negotiations for purposes of the rules of evidence of all applicable jurisdictions.

If this arbitration agreement is held to be invalid or unenforceable, then such invalidity or unenforceability will not affect the remaining terms of this agreement.

IN WITNESS WHEREOF, Principal has executed this Agreement, and Agent has caused this Agreement to be executed on its behalf by its duly authorized officer, all on the day and year as indicated on page 1 above.

AS PRINCIPAL

By: _____

Its: _____
AS AGENT