



Office of the Comptroller of the Currency

Interpretations - Conditional Approval #208

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June 28, 1996

Mr. Martin E. Simmons
Executive Vice President
General Counsel and Corporate Secretary
First American Corporation
Nashville, TN 37237

Re: First American National Bank, Nashville, Tennessee ("Bank")
Proposed Acquisition of Operating Subsidiary
Application Control Number: 96-SE-08-0007

Dear Mr. Simmons:

This is in response to your May 3, 1996 letter in which you seek Office of the Comptroller of the Currency ("OCC") approval for the Bank's plan to acquire as an operating subsidiary INVEST Financial Corporation and its subsidiaries ("INVEST") pursuant to 12 C.F.R. 5.34.

Based on the information and representations in the notification letter and other materials, we conclude that the proposed brokerage, investment advisory, financial planning, trust, and annuities sales activities are permissible for national banks and their operating subsidiaries and are consistent with prior OCC opinions. With respect to INVEST's life insurance sales activities, as requested by the Bank, the OCC will allow the Bank a two-year transition period to establish the legal permissibility of these activities or restructure the activities to bring them into compliance with national banking law. Accordingly, the Bank may proceed with its proposed acquisition pursuant to 12 C.F.R. 5.34, subject to the condition set forth below.

The Proposed Transaction

On March 27, 1996, the Bank signed a Stock Purchase Agreement with Zurich Kemper Investments, Inc. to acquire 96.2% of the capital stock of INVEST, a Delaware corporation. <NOTE: There are currently five minority shareholders of INVEST who own the remaining 3.8% of INVEST common stock. The Bank has agreed to pay an equivalent price for each share of the remaining 3.8% of INVEST stock owned by the minority shareholders. It is not known how many, if any, of the minority shareholders will take advantage of the Bank's offer.> The Bank's acquisition of INVEST is contingent on the concurrent merger of Investment Center Group, Inc., a North Dakota corporation, and its subsidiaries <NOTE: See Appendix "A" for ICG subsidiaries.> ("ICG") with and into INVEST as a wholly-owned operating subsidiary. At the conclusion of the transaction, the Bank will own 96.2% of INVEST and INVEST will own 100% of ICG. The Bank's proposed investment in INVEST and ICG will be equal to 3.3% of its total equity at March 31, 1996. At the conclusion of the

transaction, the Bank will remain "well capitalized" under the OCC's risk-based capital guidelines.

Invest Financial Corporation

INVEST is a registered securities broker, investment adviser, and third-party marketer of investment products including securities, insurance, and fixed and variable annuities. INVEST has twelve insurance agency subsidiaries licensed to operate in all fifty states, the District of Columbia, and Puerto Rico.

<NOTE: See Appendix "B" for INVEST subsidiaries.> Approximately 98% of the products sold by the INVEST insurance agency subsidiaries are fixed and variable annuities. INVEST conducts its securities, insurance, and annuities sales through financial institutions ("Subscribers") pursuant to different programs depending on the size of the financial institution and state law requirements. In its standard program, INVEST sells investment products through registered representatives and managers who are dual employees of INVEST and the Subscriber. In its managed program, INVEST employs exclusively both the registered representative and the manager(s). The managed program is used primarily in states with statutes that purport to restrict the sale of annuities or other products by bank personnel.

Investment Center Group, Inc.

ICG also operates as a third-party marketer of investment products. ICG is the parent corporation of Investment Centers of America, Inc. ("ICA"), a North Dakota corporation that also operates as a third-party marketer of investment products. ICA conducts its securities sales operations in space leased from Subscribers in over 200 financial institution locations. The leased space is separate and apart from the operations of the financial institution and is designated as an "Investment Center." ICA includes a full range of products in its bank program, including stocks, bonds, mutual funds, unit investment trusts, insurance, and annuities.

Registered representatives work on Subscriber premises as independent contractors, and are recruited, hired, and paid by ICA. Each representative is required to meet all applicable examination and licensing requirements. ICA's regional managers assist registered representatives and Subscribers with day-to-day sales and operational needs.

The Subsidiary

As an operating subsidiary of the Bank, INVEST and its subsidiaries (together with ICG, the "Subsidiary") will continue their core business of providing financial services to retail clients on the premises of depository institutions throughout the country. <NOTE: The Subsidiary will have more than 1,700 representatives registered and licensed to sell securities and investment products in more than 1,000 investment centers throughout the United States.> These services include preparing customized financial plans, selling investment products, and providing investment advice and trust services, all of which are permissible for national banks. The brokerage activities of the Subsidiary will involve primarily the sale of "packaged products" such as mutual funds, fixed and variable annuities, as well as the brokerage of equity and fixed income securities. Neither INVEST nor ICA serves as an issuer or underwriter of securities or investment products or as the principal underwriter or distributor of any investment company shares or variable annuities. Accordingly, the Subsidiary will provide all products through sales agreements with third party vendors. The Subsidiary will clear its client brokerage transactions through a third party clearing broker.

As an accommodation to their customers, INVEST and ICA currently sell a modest amount of life insurance products. These sales represent less than 2% of the total gross revenues of the combined companies. The Bank has requested a two-year transition period to establish the permissibility of these

activities or bring these activities into compliance with national banking law. <NOTE: For example, some of the places where insurance will be sold may be in towns with populations of less than 5,000. > The two-year transition period will allow the bank to evaluate and, where necessary, restructure its insurance activities without the attendant disruption of a partial shutdown.

At all Subsidiary locations, securities and insurance transactions will be effected and investment advice and recommendations disseminated only by duly licensed registered representatives of the Subsidiary and subagents of the Subsidiary's insurance agencies. The Bank has represented that in each case, (i) the terms of the arrangement will be clearly set forth in written agreements between the financial institution, the employee or independent contractor, and the Subsidiary; (ii) the Subsidiary will be conspicuously, accurately, and separately identified; (iii) appropriate disclosures will be made to ensure that the customers and other third parties understand the respective roles of the financial institution, the Subsidiary, and the dual employees or individual contractors; (iv) the arrangement will not constitute a joint venture or partnership between the Subscriber and the Subsidiary; (v) all aspects of the relationship will be conducted at arm's length; (vi) security issues arising from the activities of the Subsidiary on financial institution premises will be addressed; (vii) the Subsidiary's activities will not affect the safety and soundness of the Subscriber; (viii) all parties will comply with the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) (the "Interagency Statement"); (ix) all parties will be properly licensed and registered; and (x) the assets and records of the parties will be segregated.

It is anticipated that the Subsidiary will be managed by a seven member board of directors, including the chief operating officers of INVEST and ICA, an ICA nominee, and four Bank appointees. As the controlling shareholder, however, the Bank will control the ultimate size and composition of the board of directors.

The existing chief operating officers of INVEST and ICA will continue to manage the day-to-day operations of the companies. Those officers will have the authority to make decisions within operating guidelines set forth in a business plan ("Business Plan") which will be developed by the management of INVEST, ICA, and the Bank. The Business Plan will fully delineate the activities of INVEST and ICA. These activities will be limited to those permissible for a national bank or its operating subsidiary. The Business Plan will emphasize that INVEST and ICA are subject to full OCC regulation, supervision, and examination. The Bank will review and maintain the operations manuals and other written materials addressing the conduct of retail sales activities to ensure compliance with regulatory requirements. At the conclusion of the two-year transition period, the Subsidiary will cease to engage in any activity not permissible for a national bank or its subsidiary.

Both INVEST and ICA are registered broker-dealers under the Securities Exchange Act of 1934 and under applicable state securities laws. INVEST and ICA also are members of the National Association of Securities Dealers ("NASD"). Thus, both INVEST and ICA will be subject to all applicable requirements of the federal securities laws and the NASD Rules of Fair Practice, including the NASD's proposed rule regarding "Broker/Dealer Conduct on the Premises of Financial Institutions," if adopted. <NOTE: See SEC Release No. 34-36980 (March 16, 1996).> INVEST, ICA, and their subsidiaries are licensed to sell insurance in each state where they operate.

INVEST and ICA will not have discretionary authority over any accounts. Neither INVEST nor ICA will provide brokerage services to the Bank's trust customers except where explicitly authorized by the

customer and in accordance with all applicable, laws, rules, and regulations, including 12 C.F.R. Part 9.

Analysis

National banks may engage in activities that are part of or incidental to the business of banking by means of an operating subsidiary. <NOTE: 12 C.F.R. 5.34(c).> The brokerage, investment advisory, financial planning, trust, and annuity sales activities to be conducted by the Subsidiary are permissible banking and securities activities for national banks, and are consistent with previous opinions of the OCC.

It is well established that national banks and their subsidiaries may perform brokerage services for their customers <NOTE: See *Securities Industry Assn. v. Comptroller of the Currency*, 557 F. Supp. 252 (D.D.C. 1983, *aff'd per curiam*, 758 F.2d 739 (D.C. Cir. 1985), *cert. denied*, 474 U.S. 1054 (1986).> and sell mutual funds and annuities. <NOTE: See *Clarke v. Securities Industry Ass'n.*, 479 U.S. 388 (1987); *NationsBank v. Variable Annuity Life Insurance Company*, 115 S. Ct. 810 (1995); Interpretive Letter No. 499 (February 12, 1990), *reprinted in* [1989-90 Transfer Binder] Fed. Banking L. Rep.(CCH) 83,090; Interpretive Letter No. 403 (December 9, 1987), *reprinted in* [1988-89 Transfer Binder] Fed. Banking L. Rep.(CCH) 85,627; Interpretive Letter No. 386 (June 19, 1987), *reprinted in* [1988-89 Transfer Binder] Fed. Banking L. Rep.(CCH) 85,610; Interpretive Letter No. 363 (May 23, 1986), *reprinted in* [1985-87 Transfer Binder] Fed. Banking L. Rep.(CCH) 85,533.> The OCC has also approved the combination of investment advice and brokerage services in the same subsidiary. <NOTE: See Interpretive Letter No. 403, *supra*; Interpretive Letter No. 386, *supra*.>

In Interpretive Letter Number 622, the OCC permitted a national bank operating subsidiary to own a broker-dealer that sold securities and fixed and variable annuities on the premises of unaffiliated financial institutions as third-party marketers. <NOTE: See Interpretive Letter No. 622 (1993).> The third-party marketing arrangements approved in that letter are substantially the same as those that will be conducted by the Subsidiary, through INVEST and ICA. In addition, "dual employee" licensing arrangements with financial institutions that are not affiliated with the Bank will be conducted in a manner consistent with the Depository Institutions Management Interlocks Act. <NOTE: 12 U.S.C. 3201 *et seq.*>

As noted above, INVEST and ICA currently sell a modest amount of life insurance products in connection with the broad-based financial services they provide to customers. The Bank has requested a two-year transition period to establish the permissibility of these activities or restructure the activities to bring them into compliance with national banking law. This transition period would enable the Bank to bring its newly acquired business into compliance, as necessary, within a commercially reasonable period, without incurring the disruption of a partial shutdown of insurance activity. The OCC has permitted such transition periods in other contexts, and finds this one to be reasonable.

Conclusion

On the basis of the representations specified in your notification letter and other submitted materials, as well as those in this response, the Bank may proceed with its proposal. This response is based solely on the facts as represented and any changes in the facts might require a different result. Our analysis also reflects current legal and prudential standards and may be subject to revision as future developments warrant.

The following supervisory condition is a condition imposed in writing by the agency in connection with the granting of any application or other request within the meaning of 12 U.S.C. 1818.

The Bank shall establish the legal permissibility of its insurance activities or restructure the activities to bring them into compliance with national banking law within two years of the date of this approval.

Please feel free to contact me or MaryAnn Orr Nash at (202) 874-5210 if you have any further questions.

Sincerely,

/s/

Julie L. Williams
Chief Counsel

Appendix "A"

Investment Center Group and Its Subsidiaries

Investment Center Group is a North Dakota corporation with its principal office in Bismarck, North Dakota. ICG is a holding company that owns all of the outstanding common stock of the following subsidiaries:

- (1) Investment Centers of America, a North Dakota corporation with its principal place of business in Bismarck, North Dakota. ICA is registered as a broker-dealer with the Securities and Exchange Commission and applicable states, licensed as an insurance agency in various states, and registered with the NASD;
 - (2) Farwest Securities, Inc. ("Farwest"), a corporation that is registered with the SEC and applicable states as a securities broker-dealer;
 - (3) Farwest Advisory Services, a North Dakota corporation with its principal place of business in Bismarck, North Dakota that is registered as an investment advisor with the SEC and the North Dakota securities regulator;
 - (4) Trust Center of America, a North Dakota state-chartered limited purpose trust company with its principal place of business in Bismarck, North Dakota that does not accept deposits, make loans, or conduct a banking business;
 - (5) First Dakota, Inc., a North Dakota corporation with its principal place of business in Bismarck, North Dakota that it licensed as an insurance agency in 24 states;
 - (6) First Dakota of Montana, Inc., a Montana Corporation that is licensed as an insurance agency in Montana;
 - (7) First Dakota of New Mexico, Inc., a New Mexico corporation that is licensed as an insurance agency in New Mexico; and
 - (8) First Dakota of Wyoming, Inc., a Wyoming corporation that is licensed as an insurance agency in Wyoming.
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Appendix "B"

INVEST FINANCIAL CORPORATION AND ITS SUBSIDIARIES

INVEST Financial Corporation currently has one wholly-owned insurance agency subsidiary, INVEST Financial Corporation Insurance Agency Inc. of Delaware ("Delaware Agency").

Delaware Agency, in turn, owns all of the stock of the following eleven insurance agencies:

- (1) INVEST Financial Corporation Insurance Agency Inc. of Alabama, an Alabama corporation that conducts an insurance agency business in Alabama;
- (2) INVEST Financial Corporation Insurance Agency Inc. of Connecticut, a Connecticut corporation that conducts an insurance agency business in Connecticut;
- (3) INVEST Financial Corporation Insurance Agency Inc. of Georgia, a Georgia corporation that conducts an insurance agency business in Georgia;
- (4) INVEST Financial Corporation Insurance Agency Inc. of Illinois, an Illinois corporation that conducts an insurance agency business in Illinois and 23 other states;
- (5) INVEST Financial Corporation Insurance Agency Inc. of Maryland, a Maryland corporation that conducts an insurance agency business in Maryland, seven other states and the District of Columbia;
- (6) INVEST Financial Corporation Insurance Agency Inc. of Massachusetts, a Massachusetts corporation that conducts an insurance agency business in Massachusetts;
- (7) INVEST Financial Corporation Insurance Agency Inc. of Montana, a Montana corporation that conducts an insurance agency business in Montana;
- (8) INVEST Financial Corporation Insurance Agency Inc. of Nevada, a Nevada corporation that conducts an insurance agency business in Nevada;
- (9) INVEST Financial Corporation Insurance Agency Inc. of Oklahoma, an Oklahoma corporation that conducts an insurance agency business in Oklahoma;
- (10) INVEST Financial Corporation Insurance Agency Inc. of South Carolina, a South Carolina corporation that conducts an insurance agency business in South Carolina; and
- (11) INVEST Financial Corporation Insurance Agency Inc. of Wyoming, a Wyoming corporation that conducts an insurance agency business in Wyoming.

INVEST also controls the following operations:

- (1) INVEST Financial Corporation Insurance Agency, Inc. of Ohio; (2) INVEST Financial Corporation Insurance Agency of Texas; and
- (3) INVEST Financial Corporation Insurance Agency of Mississippi.