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## ARKANSAS SECURITIES DEPARTMENT

May 29, 2001

Mr. Paul B. Benham III  
FRIDAY, ELDRIDGE & CLARK  
2000 Regions Center  
400 West Capitol  
Little Rock, AR 72201-3493

RE: Union Power Partners, L.P.  
No Action No. 1-003

Dear Mr. Benham:

Your letters of May 18, 2001 and May 25, 2001 regarding Union Power Partners, L.P. have been forwarded to me for response. Your query involves whether a consortium of banks, or the administrative agent thereof, is required to register pursuant to the Arkansas Mortgage Loan Company and Loan Brokers Act (the "Act") under the circumstances described in your letters. The pertinent facts are recited in your letter of May 18, 2001, a copy of which is attached hereto and made a part hereof.

Under the facts set forth in your letters and as supplemented by our telephone conversations, it appears that Citibank, N.A. will be the administrative agent for the banks, and will have full authority to act on behalf of the banks insofar as the loan to Union Power Partners is concerned.

Arkansas Code Ann. § 23-39-306(a)(1) provides that any state or federally chartered bank whose accounts are insured by the F.D.I.C. is exempt from the registration, bond, and net worth requirements otherwise imposed upon mortgage loan companies under the Act. Citibank is accordingly exempt from these provisions, and need not register under the Act.

In addition, it appears likely that even if Citibank were not to be considered the appropriate entity upon which to base a determination regarding registration, the banks within the consortium would probably qualify for the exemption referred to above, at least under the intent of the law if not the letter. Although you mention that the consortium may include foreign banks, it is our understanding that foreign banks must register and be insured with the F.D.I.C. in order to do business in this country. Therefore, although perhaps not strictly "chartered" federally, they are sufficiently regulated so as to alleviate the concerns for which the requirement

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of a federal charter was included in the exemption provision. As such, it appears that no public interest would be served by requiring the banks to register under the Act.

Based upon the representations in your letter and the foregoing, the Staff of the Department will not recommend to the Commissioner that enforcement action be taken if the transaction described in your letter occurs without registration under the Act by Citibank or the banks comprising the consortium.

Please be advised that the position expressed above is based solely upon the representations set forth in your letter. Different facts and circumstances might well lead to a different conclusion. The position expressed deals only with anticipated enforcement action by the Department and does not purport to be a legal opinion. Should you have any questions, please feel free to contact me.

Sincerely,

John E. Moore, Jr.  
Staff Attorney