

Theodore Holder
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6 September 2002

Charles C. Price, Esq.
WRIGHT, LINDSEY & JENNINGS LLP
200 West Capitol Avenue
Suite 2200
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Re: Issuance of Common Stock and Trust Preferred Securities and
Buy Back Agreement Between Security Holders
No Action Letter No. 02-007

Dear Mr. Price:

We are in receipt of your letter of 29 August 2002 asking in effect for a no action position if the transaction you outline in your letter takes place as represented. I have also spoken to you and others in your office about the matter. The facts as set forth in the letter and the telephone conversations are as follows.

FACTS. First State Banking Corporation (First State) is an Arkansas bank holding company. Mr. Charles Blanchard and Mrs. Cynthia Blanchard (Purchasers) own a significant amount of the capital stock of First State. The First State Bank Capital Statutory Trust (Trust) is a Connecticut statutory trust organized and capitalized by First State. First State proposes to offer its common stock and trust preferred securities (TPS), collectively the Shares, to Mr. Robert Wilson (Wilson), an accredited investor, and the Robert Wilson Family Limited Partnership No. 2 (Wilson FLP) for the purpose of raising additional capital for First State. The TPS are issued by the Trust pursuant to an amended and restated declaration of trust identifying First State as the sponsor of the Trust and obligates First State to make payments to the holders of the TPS. Because First State receives the funds paid to the Trust for the TPS, the TPS are issued indirectly for the benefit of First State.

In addition to the Shares, Wilson and the Wilson FLP will also receive an option to sell agreement (Option) from the Purchasers that will permit Wilson to put or require the Purchasers to repurchase the Shares if certain events occur which would frustrate the purpose of this transaction. Wilson is represented to be an accredited and experienced investor and the general partner of the Wilson FLP. He, the Purchasers and their respective counsel have negotiated the terms of the Option.

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The offer and sale of the Shares will be made pursuant to Regulation D of the Securities Act of 1933, and a Form D will be filed with the Arkansas Securities Department pursuant to Ark. Code Ann. § 23-42-509(c)(1) (Repl. 2000) within fifteen days from the date of sale. Wilson and the Wilson FLP will be provided disclosure pursuant to Rule 502(b)(2) of Regulation D of the Securities Act of 1933. No commissions or other remuneration will be paid to any party for the offer and sale of these securities.

You represent in your letter that First State is complying with Rule 502(d) of Regulation D of the Securities Act of 1933, which requires the issuer of securities sold pursuant to Regulation D to exercise reasonable care to assure that the purchasers of the securities are not underwriters and sets out three precautions as the *per se* exercise of reasonable care. You represent that First State has taken all three of these precautions. First, you represent that Wilson is acquiring the Shares for himself and as the general partner of the Wilson FLP. After this transaction is consummated, you state that Wilson will be on the board of First State. Second, you state that written disclosure that the Shares cannot be resold without registration under the Securities Act of 1933 or an exemption from such registration is available is accomplished by the language of the Option. That agreement does not permit resale to the general public, but provides for another method of unwinding the transaction only upon the existence of certain conditions precedent. Third, you represent that the Shares will all bear a restrictive legend.

QUESTIONS PRESENTED. You seek a no action position from this agency that 1) the Shares are covered securities in accordance with §§ 4(2) and 18(b)(4)(D) of the Securities Act of 1933 and 2) the Option and the potential repurchase of the Shares by the Purchasers (the Blanchards) is exempt from registration as a security holder agreement pursuant to Rule 504.01(A)(12)(k), Rules of the Arkansas Securities Commissioner.

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STAFF POSITION. Covered securities defined by those sections of the Securities Act of 1933 are securities sold in a non-public offering. The offering in this matter is clearly not a public one. From the representations made in your letter and the facts learned from our telephone conversations, it appears that this is a transaction made at arm's length by persons well versed in the banking business and represented by counsel. The Option also fits the definition of a security holder agreement found in Rule 504.01(A)(12)(k) in that it is an "offer, sale, purchase or other transaction . . . among the security holders themselves in connection with a written agreement between such persons concerning the buy-back . . . of the security holders' interest . . ." Accordingly, the staff of the Department will recommend that the Commissioner take no enforcement action against First State, the Purchasers, Wilson or the Wilson FLP if the transaction described takes place without prior registration of the Shares or the Option with the Arkansas Securities Department.

Please note that the position of the Department is based solely upon the representations made to us in your letter and our telephone conversations and applies only to the transaction identified therein. Different facts or circumstances might and often would require a different response. The position expressed deals only with anticipated enforcement action by the Department and does not purport to be a legal opinion.

Very truly yours,
Theodore Holder
ASSISTANT SECURITIES COMMISSIONER