



STATE OF ALABAMA
STATE BANKING DEPARTMENT

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SBD OPINION NO. 89-1

June 13, 1989

TO: THE CHIEF EXECUTIVE OFFICERS OF STATE CHARTERED BANKS

SUBJECT: BANK TRUST DEPARTMENT INVESTMENT IN REPURCHASE/REVERSE REPURCHASE AGREEMENTS OF U. S. GOVERNMENT SECURITIES

The question has been raised as to whether the trust departments of state chartered banks in Alabama may invest in repurchase agreements or reverse repurchase agreements of securities authorized for investment under the provisions of Section 19-3-120(a)(1), Alabama Code, (1975)(bonds or other interest bearing obligations of the United States of America, or payment of which the United States of America has guaranteed as to both principal and interest).

A standard repurchase agreement consists of a two-part transaction. The first part consists of the transfer of specified securities by one party, the seller, to another party, the buyer, in exchange for cash. The second part consists of the contemporaneous agreement by the seller to repurchase the securities at the original price, plus an agreed upon amount on a specified future date. A standard reverse repurchase agreement consists of the same two-part transaction viewed from the perspective of the buyer. Thus, when one sells a security and agrees to buy it back, he is engaged in a repurchase transaction. When one buys the security and agrees to sell it back, he is engaged in a reverse repurchase transaction.

This opinion letter is limited to consideration of investment in repurchase/reverse repurchase agreements by bank trust departments in the specific United States government obligations, or obligations guaranteed as to principal and interest by the United States government listed in Section 19-3-120(a)(1), Alabama Code, (1975).

It is the opinion of the State Banking Department that the trust department of a bank may invest funds in repurchase/reverse repurchase agreements of the securities enumerated in Section 19-3-120(1), Alabama Code, (1975), and that such agreements constitute investments in and purchases and sales of such securities, provided the following conditions are met:

1. The repurchase/reverse repurchase agreement provides that the parties intend for the transaction to constitute a purchase and sale.

2. The repurchase/reverse repurchase agreement must effect transfer and delivery of the securities to the purchaser for purposes of the purchaser's obtaining the status of a bona fide purchaser under applicable law and must satisfy all requirements for the purchaser's receiving a perfected security interest in the securities under applicable law.
3. The securities subject to the repurchase/reverse repurchase agreement must be identifiable and identified.
4. The purchaser of the securities subject to the repurchase/reverse repurchase agreement must take possession of the securities or a third-party custodian must take possession of and keep the securities in a safekeeping account on purchaser's behalf. The securities must not be subject to the lien, claims or other interest of the seller, custodian, or any other person.
5. If an instrument establishes the fiduciary relationship, investment in the securities listed in Section 19-3-120(1) must be authorized in the instrument.

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