

# RHOADS & SINON LLP

ATTORNEYS AT LAW

TWELFTH FLOOR

ONE SOUTH MARKET SQUARE

P.O. BOX 1146

HARRISBURG, PA 17108-1146

TELEPHONE (717) 233-5731

FAX: (717) 231-6676

EMAIL: pwessell@rholds-sinon.com

WEBSITE: www.rholds-sinon.com

OF COUNSEL  
HENRY W. RHOADS

RETIRED  
JOHN C. DOWLING

PAUL H. RHOADS  
1907-1984

FRANK A. SINON  
1910-2003

JOHN M. MUSSELMAN  
1919-1980

CLYDE R. HENDERSHOT  
1922-1980

DIRECT DIAL NO.

(717) 231-6687

FILE NO.

3424/29

ROBERT H. LONG, JR.<sup>2</sup>  
SHERILL T. MOYER  
JAN P. PADEN  
RICHARD B. WOOD  
LAWRENCE B. ABRAMS III<sup>2</sup>  
J. BRUCE WALTER  
JOHN P. MANBECK  
FRANK J. LEBER  
PAUL A. LUNDEEN  
JACK F. HURLEY, JR.  
DAVID B. DOWLING  
DAVID F. O'LEARY  
DAVID O. TWADDELL  
CHARLES J. FERRY  
STANLEY A. SMITH  
JENS H. DAMGAARD<sup>2</sup>  
DRAKE D. NICHOLAS  
THOMAS A. FRENCH<sup>3</sup>  
DEAN H. DUSINBERRE  
DONNA M.J. CLARK  
CHARLES E. GUTSHALL  
PAUL F. WESSELL  
SHAWN D. LOCHINGER  
JAMES H. CAWLEY

DEAN F. PIERMATTEI  
KENNETH L. JOEL<sup>1</sup>  
DEBRA M. KRIETE  
TODD J. SHILL  
THOMAS J. NEHILLA  
ROBERT J. TRIEBECK  
TIMOTHY J. NIEMAN  
LORI J. MCELROY  
KEVIN M. GOLD  
CARL D. LUNDBLAD  
JAMES E. ELLISON  
RICHARD E. ARTELL  
PAUL J. BRUDER, JR.<sup>4</sup>  
JOANNE BOOK CHRISTINE  
MICHAEL W. WINFIELD<sup>3</sup>  
STEPHANIE E. DIVITTORRE  
KATHLEEN D. BRUDER<sup>1,5</sup>  
JOHN M. COLES  
HEATHER Z. KELLY  
JAMES J. JARECKI<sup>1</sup>  
JENNIFER ZIMMERMAN  
DAVID K. KRUFF

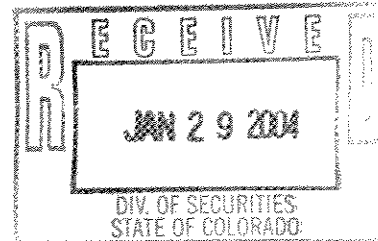
1 ALSO ADMITTED TO THE DISTRICT OF COLUMBIA BAR  
2 ALSO ADMITTED TO THE FLORIDA BAR  
3 ALSO ADMITTED TO THE MARYLAND BAR  
4 ALSO ADMITTED TO THE NEW JERSEY BAR  
5 ALSO ADMITTED TO THE NEW YORK BAR  
6 NATIONAL BOARD OF TRIAL ADVOCACY CERTIFIED

January 26, 2004

Re: Brethren in Christ Foundation, Inc.

Request for Discretionary Exemptions or No-Action Positions

Mr. Richard Djokic  
Deputy Securities Commissioner  
Colorado Division of Securities  
1580 Lincoln Street, Suite 420  
Denver, CO 80203



Dear Mr. Djokic:

On behalf of our client Brethren in Christ Foundation, Inc. (the "Foundation"), we hereby request the following:

1. A discretionary securities registration exemption for the Foundation's offer and sale of its unsecured debt securities in Colorado or, in the alternative, a no-action position with respect to the Foundation's eligibility to rely on the securities registration exemption provided by Section 51-3.15 of the Rules of the Colorado Division of Securities ("Rule 3.15") specifically related to the issue of the Foundation's satisfaction of the conditions set forth in Paragraphs F and G.2 of Rule 3.15 as a result of its use of proceeds to make residential mortgage loans to ministers ; and
2. A discretionary exemption from sales representative registration for employees of the Foundation who, along with the Foundation's Chief Executive Officer and Controller, will be involved in the offer and sale of the Foundation's debt securities in Colorado or, in the alternative, confirmation that such sales representative registration is not required as a result of preemption of state agent registration requirements by the federal Philanthropy Protection Act.

Enclosed please find a copy of the current Prospectus used by the Foundation. It is revised annually as of approximately April 19. Also enclosed is a check for \$100 in payment of

## **RHOADS & SINON LLP**

January 26, 2004

Page 2

the processing fee for this request, made payable to the Colorado State Treasurer. For convenience of the staff, we have enclosed two additional copies of this request letter.

### **The Foundation and the Foundation's Loan Fund**

The Foundation is an Indiana religious non-profit corporation headquartered in Grantham, Pennsylvania. The Foundation (originally named "The Jacob Engle Foundation, Inc.") was incorporated by the Brethren in Christ Church in 1972 to serve as its financial services arm, including by operating a church extension loan fund. The Foundation qualifies as a 501(c)(3) tax exempt organization under the Internal Revenue Code of 1986, as amended.

The Foundation offers and sells its unsecured debt securities on a continuous basis for purposes of funding loans for the acquisition, construction and remodeling of Brethren in Christ churches, parsonages and other church-related projects, including residential loans to ministers. The debt securities are offered and sold only to persons, who at the time of receiving a purchase application, are members, constituents, contributors to or participants in the Foundation, the Brethren in Christ Church and/or its organizations, or ancestors or descendents of such persons, or to Brethren in Christ individual retirement plans if so directed by the holder thereof.

More detailed information concerning the Foundation, the loan fund and the unsecured debt securities is set forth in the enclosed Prospectus.

### **Securities Registration Exemption**

We understand from information provided by Division staff (Mr. Henry Withers) that the statutory securities registration exemption set forth at Section 11-51-307(g) of the Colorado Securities Act is not available for an offering such as the Foundation's because the category of proposed offerees is broader than is understood to be permitted by Section 11-51-307(g). Therefore, the Foundation requests either a discretionary securities registration exemption under Section 11-51-309 or, in the alternative, a no-action position with respect to the Foundation's compliance with Paragraph F and G.2 of Rule 51-3.15. (For purposes of any no-action response, it may be assumed that the Foundation satisfies all other conditions of Rule 3.15.)

The Foundation satisfies, and will continue to satisfy, the requirements of Paragraphs A through E of Rule 3.15 as follows:

- A. The Foundation is an Indiana religious non-profit corporation founded and controlled by the Brethren in Christ church.
- B. The Foundation qualifies and operates under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

## RHOADS & SINON LLP

January 26, 2004  
Page 3

- C. The Foundation:
  - 1) was incorporated in 1972 and, therefore, has been in existence for over ten years;
  - 2) has received audited financial statements with an unqualified opinion from a certified public accountant for more than its most recent three years and:
  - 3) has never defaulted on any outstanding obligations to investors.
- D. The Foundation's (1) cash, cash equivalents and readily marketable securities have had a market value of at least 5% of the principal balance of its total outstanding debt securities for the last three fiscal years; and (2) net worth has been at least three percent (3%) of its total assets for the last three fiscal years (see Statements of Financial Position set forth at Page A-3 of the enclosed Prospectus).
- E. Prior to any sale of securities in Colorado, the Foundation will provide an investor with a copy of its current Prospectus reflecting financial and other information concerning the Foundation and the relevant risks involved.

Our concern and request for a discretionary exemption or no-action position arises from the fact that Paragraphs F & G of Rule 3.15 condition the eligibility of the exemption provided by Rule 3.15 on the use of proceeds for loans in support of local churches or other religious organizations affiliated or associated with such churches or related religious organizations (Paragraph F) and the issuer making loans, fully secured by church-related property to finance the purchase, construction or improvement of church-related property, buildings, related capital expenditures, or to refinance existing debt so secured, or for other operating expenses of the entities described in Paragraph F provided the obligation is secured by such property (Paragraph G.2). (Historically, the Foundation's net worth has not been in excess of \$5 million and is subject to fluctuation; therefore, satisfaction of alternate condition G.1 cannot be assured.)

The Foundation operates so as to satisfy Paragraphs F and G.2, except that it also uses the proceeds of the offer and sale of its securities to make mortgage loans directly to ministers to purchase residences. Such residential loans are fully secured by the home purchased. However, because the Rule does not expressly permit such residential loans, which benefit the Brethren in Christ Church by providing reasonably priced home financing to its ministers, we respectfully request on behalf of the Foundation that the Commissioner either (1) grant a discretionary exemption to the Foundation from the securities registration requirements without the necessity of the Foundation relying on Rule 3.15, or (2) take a no-action position if the Foundation relies

## RHOADS & SINON LLP

January 26, 2004

Page 4

on the Rule 3.15 exemption from securities registration notwithstanding the residential loans to ministers.

### **Sales Representative Registration**

As stated in the enclosed Prospectus, at page 19 under "Method of Sale," the Foundation's Chief Executive Officer, Controller, and other authorized officers are authorized to sell the Foundation's debt securities. The Chief Executive Officer and Controller (the position of Controller is currently vacant) are officers of the Foundation who perform substantial duties other than in connection with the offer and sale of the Foundation's debt securities and their compensation is not based in whole or in part, upon the amount of purchases or sales of the Foundation's securities effected by the officer. Therefore, it is our understanding that the Chief Executive Officer and Controller are excluded from the definition of "sales representative" and are not required to register in Colorado as such.

The Foundation's Account Officer has as her primary responsibilities, under the supervision of the Foundation's CEO and Controller, duties related to the offer and sale of the Foundation's debt securities, including correspondence and inquiries from purchasers and potential purchasers. However, the Account Officer does not receive any compensation based, in whole or in part, upon the amount of purchases or sales of securities she effects. Although we acknowledge that the Account Officer's duties are primarily related to the Foundation's offer and sale of its debt securities (which occurs on a continuous basis), we hope the Commissioner will agree that sales person registration is not necessary in this situation. Therefore, we respectfully request that the Account Officer (currently Kimberly R. Jacobs) be exempted from sales representative registration pursuant to the Commissioner's discretionary authority under Section 11-51-402(2)(c) of the Colorado Securities Act.

As an alternative to this discretionary exemption, we ask the Commissioner to take a no-action position if the Foundation does not register its Account Officer in reliance on preemption of state agent registration requirements by the federal Philanthropy Protection Act. To date, the states of Kansas, Indiana, Iowa and Oregon have taken such a position with respect to the Foundation's employees.

The Philanthropy Protection Act (Dec. 8, 1995, P.L. 104-62) provided, among other things, relief to charitable organizations from federal securities laws requiring broker-dealer, investment adviser and agent (salesperson) registration. See Section 3(e) of the Securities Exchange Act of 1934.

Section 6(b) of the Philanthropy Protection Act also provides for the preemption of state dealer, broker, agent and investment adviser registration requirements under state securities laws with respect to certain activities of charitable organizations unless the state opted out of the

## RHOADS & SINON LLP

January 26, 2004

Page 5

preemption by November 7, 1998. (Section 6(a) of the Philanthropy Protection Act preempts state securities registration provisions only for certain charitable income funds and is not relevant to this letter.) The preemption provision of Section 6(b) reads as follows:

(b) **Treatment of charitable organizations.** No charitable organization, or any trustee, director, officer, employee, or volunteer of a charitable organization acting within the scope of such person's employment or duties, shall be required to register as, or be subject to regulation as, a dealer, broker, agent, or investment adviser under the securities laws of any State because such organization or person buys, holds, sells, or trades in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of one or more of the following:

- (1) a charitable organization;
- (2) a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 USCS §80a-3(c)(10)(B)]; or
- (3) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940 [15 USCS §80a-3(c)(10)(B)], of the settlors (or potential settlors) or beneficiaries of any such trusts or other instruments.

(c) **State action.** Notwithstanding subsections (a) and (b), during the 3-year period beginning on the date of enactment of this Act [enacted Dec. 8, 1995], a State may enact a statute that specifically refers to this section and provides prospectively that this section shall not preempt the laws of that State referred to in this section.

15 USCS §80a-3a (Dec 8, 1995, P.L. 104-62, §6,109 Stat. 685).

For purposes of (b)(1) above, "charitable organization" is defined in Section 3(c)(10)(D) of the Investment Company Act as "an organization described in paragraph (1) through (5) of section 170(c) or section 501(c)(3) of the Internal Revenue Code of 1986." The Foundation is a 501(c)(3) charitable organization satisfying this definition.

To our knowledge, Colorado has not opted out of the Philanthropy Protection Act's preemption. Therefore, we believe that your state's broker-dealer and agent (salesperson) registration provisions have been preempted if the officer or employee of the charitable organization buys, holds, sells or trades in securities on behalf of or for the account of a charitable organization. This preemption is without regard to the type of nonprofit securities

**RHOADS & SINON LLP**

January 26, 2004

Page 6

offered or sold, and includes debt securities. Admittedly, clauses (b)(2) and (b) (3) of Section 6(b) cited above focus on charitable income funds and common trust funds (activities that have historically raised "separate security" concerns where a nonprofit securities registration exemption was otherwise available). However, clause (b)(1) is not so limited and applies to all selling activities by officers and employees on behalf of the charitable organization. It is our interpretation of the Philanthropy Protection Act's preemption provision that officers and employees of the Foundation engaged in the offer and sale of debt securities on behalf of the Foundation, a charitable organization, are no longer required to register as a broker, dealer, agent or salesperson in your state.

We believe that the Philanthropy Protection Act preempts broker-dealer and salesperson registration provisions of your state's securities laws in the case of the officers and employees of the Foundation under the circumstances described above. If you determine not to grant a discretionary exemption from agent registration for the Foundation's Account Officer, we request your concurrence in our opinion or, in the alternative, a representation that your state will not take enforcement action if, in reliance on our interpretation, the Foundation does not register its Account Officer in your state and does not register in Colorado any new agents in the future.

If you have any questions or require additional information, please contact me by telephone at (717) 231-6687, email at [pwessell@rhoads-sinon.com](mailto:pwessell@rhoads-sinon.com) or facsimile (717) 231-6676. If the Commissioner is not able to grant the relief requested, we would like the opportunity to respond to any concerns before a final determination is issued. Thank you in advance for your attention to this matter.

Very truly yours,

RHOADS & SINON LLP

By:   
Paul F. Wessell

PFW/cjw

Enclosures: Prospectus  
Check  
Two Extra Copies of this Letter

cc: Elvin H. Peifer, CEO (w/o enc)

# STATE OF COLORADO

## Division of Securities

Department of Regulatory Agencies

1580 Lincoln, Suite 420  
Denver, Colorado 80203  
Phone: (303) 894-2320  
TDD/V: (303) 894-7880  
FAX: (303) 861-2126

Fred J. Joseph  
Securities Commissioner



Bill Owens  
Governor

Richard F. O'Donnell  
Executive Director

February 3, 2004

Paul F. Wessell  
RHOADS & SINON LLP  
One South Market Square, 12<sup>th</sup> Floor  
Harrisburg, PA 17108

**RE: Brethren in Christ Foundation, Inc.**  
**Our File Nos. A-004-005 and OP 2004-26-475**

Dear Mr. Wessell:

The staff of the Division of Securities ("Staff") is in receipt of your letter dated January 26, 2004, along with the attached Prospectus, regarding the above-referenced entity. In your letter, you request, on behalf of your client, Brethren in Christ Foundation, Inc. ("BCF") the Staff confirm the availability of the exemption from registration under the Colorado Securities Act ("Act") found in Division Rule 51-3.15, promulgated pursuant to §11-51-307(1)(g), C.R.S., in connection with the offer and sale of BCF's unsecured debt instruments, as described in your letter and accompanying attachments. Also, you request a discretionary exemption from the broker-dealer or sales representative licensing requirements of the Act for the officers, control persons, and employees of BCF in connection with the offer and sale of the securities of BCF in Colorado.

According to the representations in your letter and attached Prospectus, we understand BCF was incorporated under Indiana law in 1972 as a religious nonprofit corporation. BCF is operated exclusively for religious purposes and no part of its earnings inure to the benefit of any private individual. BCF provides financial services to various Brethren in Christ denominational entities, including the maintenance of a fund to provide financing for the purchase, construction and remodeling of churches, parsonages, and church related projects, as well as a source of funds for ministers for residential loans. These loans are generally secured by real estate having a value greater than the loan amount.

BCF's outstanding debt securities, and well as its loan activity, are accounted for with the "Brotherhood Loan Fund" ("BLF"). Since inception of the BLF in 1976, BCF

Paul F. Wessell  
February 3, 2004  
Page 2

has never defaulted in the payment of principal or interest on any of its debt securities. Pursuant to the Prospectus, BCF proposes to offer and sell an aggregate of \$25,000,000 of "securities" in the form of Stewardship Investment Certificates, Thrift Accumulation Plan Agreements, and Individual Retirement Account Notes (hereinafter the "Securities").

The Securities are unsecured obligations of BCF and have variable interest rates and maturity dates. Proceeds from this offering will be deposited in the BLF, which primarily serves as a source of funds from which loans may be made to church organizations or affiliates for the purposes identified above relative to the BCF. The loans made by BLF will generally not exceed 80% of the appraised value of a completed project, and may require, in certain circumstances, guarantees from the Regional or General Conference. No single loan made by BLF may exceed 25% of the total assets of the Fund at the time such loan is made.

Pursuant to your letter and the Prospectus, we further understand BCF has cash, cash equivalents, and readily marketable securities with a market value of at least 5% of the principal balance of its total outstanding debt securities for the past three fiscal years, and net worth of at least 3% of its total assets for the same period. Additionally, the Prospectus contains BCF's Statements of Financial Position as of December 31, 2002 and 2001, and Statements of Activities for the years ended December 31, 2002, 2001, and 2000. The financial statements for these three years have been audited on behalf of BCF.

Solicitation for the sale of the Securities will be made through dissemination of promotional materials through national and regional publications of the Church and through BCF's brochures distributed to each congregation or mailed directly to prior investors, and which brochure may be distributed at church conferences, retreats, conventions, and seminars. Prior to any sale of the subject securities, BCF will provide investors a copy of its Prospectus, and only BCF's Chief Executive Officer, Controller, and Account Officer are authorized to offer and sell BCF's securities. These persons have substantial duties to BCF other than in connection with the offer and sale of the Securities, and will not receive compensation based, in whole or in part, upon the amount of purchases or sales of Securities each of them may effect.

Based on the representations contained in your letter and the attachments thereto, and without reaching a determination as to the availability of the exemption from securities registration found in Division Rule 51-3.15, the Staff will not recommend to the Securities Commissioner that formal enforcement proceedings be initiated against BCF, its officers, directors, employees, or control persons for violation of the registration provisions of the Act relative to the offer and sale of the Securities of BCF described in your letter. Further, the Staff will not recommend to the Securities Commissioner that formal enforcement proceedings be initiated against BCF, its officers, directors or employees, for violation of the broker-dealer or sales representative licensing provision of the Act in connection with the offer and sale of the Securities of BCF.

It should be noted that this letter only expresses the Staff's position in regard to the availability of an exemption from registration and the initiation of formal enforcement

Paul F. Wessell  
February 3, 2004  
Page 3

action, and does not purport to express any legal opinion or conclusion on the questions presented. Also, it should be noted that any change in the facts or circumstances described in your letter, or attachments thereto, might require a different response.

If there are questions regarding the foregoing, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Djokic". The signature is written in a cursive style with a large, prominent initial "R".

Richard Djokic  
Deputy Securities Commissioner