

TARP (12)

Exhibit 5(b)(8) (CPP Opinion to U.S. Department of Treasury)

January 9, 2009

United States Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 2312
Washington, D.C. 20220
Attention: Assistant General Counsel (Banking and Finance)

Re: Purchase of Fixed Rate Cumulative Perpetual Preferred Stock, Series A (UST
Seq. No. 143)

Ladies and Gentlemen:

We have acted as counsel to Security Business Bancorp, a California corporation (the "**Company**"), for the purpose of rendering certain opinions, set forth herein, in connection with the purchase of 5,803 shares of the Company's Fixed Rate Cumulative Perpetual Preferred Stock, Series A ("**Preferred Shares**") by the United States Department of the Treasury ("**UST**") pursuant to that certain Letter Agreement incorporating the Securities Purchase Agreement – Standard Terms dated of even date herewith between the Company and UST (the "**Agreement**"), and the other transactions contemplated thereby (collectively, the "**Transaction**"). This opinion letter is provided pursuant to Section 1.2(d)(vi) of the Agreement.

We understand that in this transaction, and in the review and acceptance of this opinion letter, you are represented by independent counsel of your choosing with expertise in the relevant subject matter.

1. **Factual Examination.**

1.1 **Documents.**

(a) **Transaction Documents.** As used herein, "**Transaction Documents**" refers to unsigned copies of the following documents:

- (i) Agreement; and
- (ii) Warrant to Purchase Preferred Stock dated January 9, 2009, issued to UST by the Company for 290.0029 shares of the Company's Fixed Rate Cumulative Perpetual Preferred Stock, Series B ("**Warrant**").

(b) **Company Documents.** As used herein, "**Company Documents**" refers to the following documents:

- (i) Articles of Incorporation of the Company certified by the California Secretary of State as of December 27, 2008 ("**Articles of Incorporation**");

(ii) Certificate of Determination of the Company for the Company's Fixed Rate Cumulative Perpetual Preferred Stock, Series A certified by the California Secretary of State as of January 7, 2009 ("**Preferred Shares COD**");

(iii) Certificate of Determination of the Company for the Company's Fixed Rate Cumulative Perpetual Preferred Stock, Series B certified by the California Secretary of State as of January 7, 2009 ("**Warrant Shares COD**");

(iv) Bylaws of the Company, dated September 5, 2007, as amended December 19, 2008, as certified by the Secretary of the Company ("**Bylaws**");

(v) Certificate of Status from the California Secretary of State for the Company dated December 27, 2008 ("**Good Standing Certificate**");

(vi) Certificate of Entity Status from the California Franchise Tax Board for the Company dated December 22, 2008 ("**Tax Good Standing Certificate**");

(vii) Certificate of Officers of the Company dated January 9, 2009 (the "**Officer Certificate**");

(viii) Certificate of Secretary of the Company dated January 9, 2009 (the "**Secretary Certificate**"); and

(ix) Minutes of the Company's Board of Directors meeting of December 19, 2008 ("**Minutes**").

1.2 Scope of Inquiry; Certain Assumptions.

(a) For purposes of this opinion, we have examined the Transaction Documents, the Company Documents and such other documents and information we have deemed necessary. We have assumed the correctness of all factual matters set forth therein. We have not conducted any: (i) investigation or examination of factual matters; or (ii) docket or other search of the records of any court, administrative tribunal, recording or filing office, or other public entity.

(b) In rendering this opinion, we have assumed: (i) the genuineness of all signatures (if any) on all documents reviewed by us; (ii) that the Transaction Documents have

been or will be duly authorized (except as to the Company), executed, and delivered by and on behalf of the parties thereto and will be the legal, valid and binding obligations of the parties (other than the Company) once executed and delivered; (iii) that the copies of the Transaction Documents and the Company Documents provided to us are complete and correct copies which conform to authentic original documents, and contain the entire agreement of the parties thereto, that there are no other documents or oral agreements or other circumstances that would in any way alter the provisions of the Transaction Documents and/or the Company Documents, and that there has not been any mutual mistake of fact or misunderstanding, fraud, duress or undue influence with respect thereto; (iv) that each natural person executing or who has executed the Transaction Documents or the Company Documents is or was competent to do so; and (v) the accuracy, completeness and authenticity of all certificates on which we have relied, and that any such certificates dated as of an earlier date are still accurate as of the date hereof.

2. **Opinion.** On the basis of the foregoing, but subject to the additional qualifications, assumptions and limitations set forth below, we are of the opinion that, as of the date hereof:

2.1 The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the state of its incorporation.

2.2 The Preferred Shares have been duly and validly authorized, and, when issued and delivered pursuant to the Agreement, the Preferred Shares will be duly and validly issued and fully paid and non-assessable, will not be issued in violation of any preemptive rights, and will rank *pari passu* with or senior to all other series or classes of Preferred Stock (as defined in the Agreement) issued on the Closing Date (as defined in the Agreement) with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

2.3 The Warrant has been duly authorized and, when executed and delivered as contemplated by the Agreement, will constitute a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity.

2.4 The shares of Warrant Preferred Stock (as defined in the Agreement) issuable upon exercise of the Warrant have been duly authorized and reserved for issuance upon exercise of the Warrant and when so issued in accordance with the terms of the Warrant will be validly issued, fully paid and non-assessable, and will rank *pari passu* with or senior to all other series or

classes of Preferred Stock, whether or not issued or outstanding, with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

2.5 The Company has the corporate power and authority to execute and deliver the Agreement and the Warrant and to carry out its obligations thereunder (which includes the issuance of the Preferred Shares, Warrant and Warrant Shares).

2.6 The execution, delivery and performance by the Company of the Agreement and the Warrant and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of the Company and its stockholders, and no further approval or authorization is required on the part of the Company.

2.7 The Agreement is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity; provided, however, we express no opinion with respect to Section 4.5(h) or the severability provisions of the Agreement insofar as Section 4.5(h) is concerned.

3. Qualifications, Assumptions and Limitations. Our opinion above is subject to and limited by the following qualifications, assumptions and limitations, in addition to those set forth elsewhere in this letter:

3.1 The unenforceability under certain circumstances of contractual provisions relating to the following, as to which we express no opinion: indemnity, release, limitations upon liability or exculpation of a party with respect to its own wrongful or negligent acts, or otherwise contrary to public policy or prohibited by law.

3.2 In rendering the opinion set forth in Section 2.1 relating to good standing, we have relied, without further investigation, solely on the Good Standing Certificate.

3.3 We express no opinion as to the effect or enforceability as to any provision involving consent to or establishment of jurisdiction and/or venue or stipulations with respect thereto except to the extent that such provision is made enforceable by the New York General Obligations Law Section 5-1402, as applied by a New York state court or a federal court sitting in New York.

3.4 We note that certain of the Loan Documents contain provisions stating that they are to be governed by the laws of the State of New York (a "Chosen - Law Provision"). Except to the extent that such a Chosen - Law Provision is made enforceable by New York General Obligations Law Section 5-1401, as applied by a New York state court or a federal court sitting in New York and applying New York choice of law principles, no opinion is given herein as to any Chosen - Law Provision or otherwise as to the choice of law or internal substantive rules of law that any court or other tribunal may apply to the transactions contemplated by the Transaction Documents.

4. **Laws Relevant to Opinion; Matters Post-Dating Opinion**

4.1 This opinion letter relates solely to the laws of the State of California, the State of New York (other than laws relating to conflicts or choice of law, except as expressly stated in Section 3.3 (to the extent described below) and applicable federal law in effect on the date hereof (but subject, however, to the exclusion of certain laws as set forth elsewhere herein). Other than with respect to our opinions referenced in Section 2.3 and 2.7 (implicating the laws of the State of New York), we have not examined and do not opine with respect to the applicability or effect of any other laws. Except to the extent expressly stated in Section 3.3, we express no opinion, and none should be inferred as to (i) which states' law governs the Transaction Documents and under which states' law they would be interpreted, or (ii) the enforceability of any choice of law provisions in any Transaction Document.

4.2 We express no opinion with respect to laws becoming effective after the date hereof. This opinion relates only to matters as of the date hereof, and we express no opinion with respect to any transaction, transfer, conveyance, obligation or performance occurring after the date hereof. We disclaim any obligation to advise you of any events occurring or coming to our attention or any developments in areas covered by this opinion that occur after the date of this opinion.

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5. Use and Reliance

This opinion is provided at your request and solely to you for use in connection with the Transaction. This opinion may not be relied upon by any other person or for any other purpose, without our prior written consent.

Very truly yours,