



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

February 24, 2010

Re: —Request for interpretation

Dear M

This is with regard to your letter of February 1, 2010 concerning the proposed securities offering by (Bank) and the subsequent conversion of said securities into securities of , the holding company for . You have asked that we concur with your opinion that the capital-raising program outlined therein is not prohibited by the Securities Act of 1933 ('33 Act) or the Idaho Uniform Securities Act (IUSA).

The Bank proposes that it will first distribute "rights" or some other form of convertible security to existing shareholders and then offer these rights to new investors. Your February 1 letter does not specify that this offer is to new investors as well as existing, but that is our understanding from conversations with you and the Bank's representatives. The amount of the offering will be between \$3-5 million.

Once the securities have been distributed or sold, the securities will immediately and mandatorily become convertible into an equal number of shares in . This will result in all purchasers of the securities issued by the Bank becoming shareholders in . All the proceeds of this sale and subsequent conversion will be immediately contributed by to the capital of the Bank.

The Bank is a wholly-owned subsidiary of . The Bank asserts that the structure of this transaction is desirable because of the cost and time required to register the securities or qualify the securities for exemption under Regulation D. Also, the Bank wishes to keep as its sole shareholder.

We do not offer an opinion as to whether the transaction complies with the '33 Act. With regard to compliance with the IUSA, we do not necessarily concur with your conclusions; however, we agree to take a no enforcement action position with regard to this proposal if the Bank and agree to certain conditions:

SECURITIES BUREAU
Bureau Chief - Marilyn T. Chastain
800 Park Boulevard, Suite 200, Boise, ID 83712
Mail To: P.O. Box 83720, Boise ID 83720-0031
Phone: (208) 332-8004 Fax: (208) 332-8099
<http://finance.idaho.gov>

- All of the proceeds of the initial offering and subsequent conversion will be contributed by _____ to the capital of the Bank.
- _____ will remain 100% owner of the Bank.

- The Bank and _____ hold a fairness hearing as prescribed by Section 30-14-202(9) of the IUSA. The hearing will take into account the no enforcement action position by the Department and will establish the fairness of the conversion of the securities from interests in the Bank to those of _____.
- The offering and subsequent conversion are subject to all anti-fraud and disclosure provisions of the IUSA.

Based on the representations of the Bank and _____ and its representatives, we agree to take a no enforcement action position with regard to the proposal if the above conditions are met. If representations by the Bank, _____ or its representatives are not accurate or change, the Department's no enforcement action position may change as well. The Bank and _____ are further advised that this no enforcement action position is not binding on other states. Other states may disallow this proposed plan or may issue their own "no-action" position letters.

Sincerely,



Marilyn T. Chastain
Securities Bureau Chief

Idaho Department of Finance
Attention: Patricia Highley
P.O. Box 83720
Boise, ID 83720-0031

Re: Capital Formation Program

Dear Sir:

Our firm represents _____, an Idaho state-chartered bank (the "Bank"), a wholly-owned subsidiary of _____, an Idaho corporation ("_____"), whose shares are publically traded in the over-the-counter market. _____ has approximately 246 shareholders of record and accordingly is not a reporting company under the Securities Exchange Act of 1934. As a result of recent federal and state examinations of the Bank and deteriorating economic conditions generally, the Bank needs an infusion of capital in order to maintain its "well-capitalized" standing under banking laws and regulations. The Bank's capital-raising program will attempt to raise approximately \$3,000,000-\$5,000,000, all of which will become capital of the Bank.

Prior meetings with your department indicted some concern on your part as to the mechanics of the capital program and that it may be a "stacking" of exemptions which could be prohibited by the Securities Act of 1933 (the "33 Act") and the Idaho Securities Act (the "Idaho Act").

The following is our summary of the form of the transaction and our opinion that the program as set forth herein will not be violative of either the 33 Act or the Idaho Act.

Form of Transaction

_____ as the sole shareholder of the Bank, will cause the Articles of Incorporation of the Bank to be amended to provide sufficient shares for the next step. The Bank will then distribute rights to purchase shares and warrants of the Bank to existing shareholders of _____. The mix of rights and/or warrants, or both, has yet to be determined; however, for purposes of this opinion, the mix will be a security offered by the Bank. Because the Bank is a subsidiary of _____ it is not desirable to have additional shareholders of the Bank other than _____.

Accordingly, the “right” distributed to _____ shareholders by the Bank will be subject to an exchange for an identical number of shares and warrants of _____. That transaction will be subject to a “fairness hearing” as set forth in Section 3(a)(10) of the 33 Act and Section 30-14-202A of the Idaho Act. If approved at such fairness hearing, the rights so submitted, will be exercised and the funds, less transaction costs will be immediately contributed by _____ to the capital of the Bank.

Legal Bases for Opinion

The issuance of rights to purchase shares by the Bank are exempt from the 33 Act by virtue of Section 3(a)(2) and the Idaho Act, Section 30-14-201(3)(b).

The 33 Act expressly provides “the provisions of this title shall not apply to any of the following classes of securities: (2). . . or any security issued or guaranteed by any bank” This is a statutory exemption of the security, not a transactional exemption.

Section 3(a)(10) of the 33 Act and Sections 30-14-202(9) and 30-14-202A of the Idaho Act together provide the exemption for the second step. If approved at a fairness hearing held pursuant to the Idaho Act, the _____ shares so exchanged for shares subscribed to in the rights offering by the Bank will be exempt from both Acts and freely tradable in the hands of non-affiliate shareholders of _____. The Bank will again become a wholly-owned subsidiary of _____.

We have reviewed Release No. 33-4552 (November 6, 1962) promulgated under the 33 Act (the Release) which, among other things, discusses integration of non-public offerings, relying on Section 4(2) of the 1933 Act (the private offering exemption), now codified at Regulation D. We are of the opinion that that Release is not applicable to the Bank’s capital-raising program. Notwithstanding that it could be construed as a single plan of financing, it is, nevertheless, not subject to integration restrictions as set forth in the Release. The Release emphasizes that the exemptions provided in Section 4 of the 33 Act are exemptions from the registration and prospectus requirements of the 33 Act. The transactions described in the Bank’s capital formation program are not subject to Section 4 of the 33 Act, but are governed by Section 3, which totally exclude both the issuance by the Bank and the subsequent exchange for shares from its provisions.

The Release is not applicable to the Bank capital-raising program.

Idaho Department of Finance
February 1, 2010
Page 3

Conclusion

We are of the opinion that the capital-raising program as outlined herein is not prohibited by either the 33 Act or the Idaho Act and respectfully request your concurrence therein.

Very truly yours,