



IDAHO
DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

May 29, 2014

[REDACTED]
[REDACTED]
[REDACTED]

Re: Request for No Action or Opinion

Dear Mr. [REDACTED]:

This is the third response to your request for either a no action or opinion concerning the proposed business activities that you describe in documents received by this Department on or about February 21, 2014 (correspondence not dated) and your follow-up correspondence dated April 16. The formal response from the Department issued in the May 7 correspondence recited facts and stated our position.

The May 15, 2014 correspondence received from you appears to dispute information provided in earlier correspondence. For example, your earlier correspondence states funds will be provided by various family members. Now you state only you will be providing funds. You stated in your April 16 letter that funds are comingled and [REDACTED] tracks the loaned funds. You now indicate there are no notes or evidence of indebtedness whatsoever. You state [REDACTED] is not managing funds, however, as Special Function Manager, [REDACTED] appears to have authority to exclusively manage the loaned funds under the Client Authorization Form and [REDACTED] pays [REDACTED] to protect the loaned funds. You state there is no expectation of profits, yet section 4 of the Lending and Security Agreement stipulates required payment of interest and fees.

Pursuant to Rule 3 of the Idaho Uniform Securities Act (2004) the Department will not consider hypotheticals. Your letter dated May 15, 2014 appears to be attempting to negotiate a no action or opinion position from the Department based on proposed changes to the business model. It remains unclear that the proposed activities you describe would not violate state or federal securities law. Therefore we decline to opine or issue a no action position on whether or not the proposed business model is in compliance the Idaho Uniform Securities Act (2004).

Sincerely,

Walt Bitner
Securities Analyst

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May 15, 2014

Walt Bitner
Securities Analyst
Idaho Department of Finance

RECEIVED
2014 MAY 19 AM 10:52
IDaho Department of Finance
DEPT OF FINANCE

Re: Request for No Action Letter/Opinion

Dear Mr. Bitner:

Pursuant to our conversation I am responding to your letter of May 7, 2014. I am sorry that your initial conclusion is that the Department is unable to take a "no action" position. I should like to address this after I speak to the primary topic of our conversation; the "proposed business relationships" and methodologies as outlined in my April 16, 2014 response, and the interpretation that they fall "under the jurisdiction of the Idaho Uniform Securities Act (2004) (IUSA).

I will attempt to clarify for the Department the intended meaning of my 4/16 communication, and correct any misunderstandings. Paragraph two of your May 7 letter interprets the 4/16 letter as speaking of "note investments by your family members". As I have explained, that is not the case. There are no note investments by any family members. Next, I believe that you misunderstand my statement that "██████ is responsible for tracking any loaned funds. I state that, "In this case the initial loan will be \$80,000.00". ██████ actually tracks the funds loaned by ██████ to ██████. He would not track individual's funds. Lastly, I don't think that we can say that ██████ manages the funds. The duties of the Special Function Manager are detailed in Section 2 of the Management Agreement. Managing funds is not specified, and the term itself has many connotations, none of which apply here.

The third paragraph of the May 7 Department missive gives the definition of a "Security". In my relationship with family members there are no notes, no evidence of indebtedness, and no funds are borrowed. There is no certificate of interest or participation in a profit sharing agreement. Further there is no investment contract, no expectation of profits, and in fact no investor, nor any offering of investment. The funds of my family have been given to me to do with as I see fit, with no restriction, nor expectation. Having said this; you have pointed out that it gives the appearance of: "issuance of a security as defined by 30-14-102(28) of the IUSA."

As we discussed, we have no desire to violate any rules, regulations or laws. We understand that the proposed relationships regarding family funds must not be allowed. I have agreed that I will be restricted to using solely my funds and no funds from other family members.

Given this modification to the proposed business, and having read through the Idaho Securities Act, we now believe that our activities would not be disallowed under the Act. Therefore, we respectfully request that you consider a No Action Letter or Opinion Letter.

Thank you for your further consideration.

[REDACTED]

Managing Member



IDAHO

DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

May 7, 2014

Re: Request for No Action/Opinion

Dear Mr. [REDACTED]:

This is in reference to your responses to the Department's letter dated March 31, 2014. Your letter dated April 16, 2014 clarifies some aspects of the proposed business model, however, it also raises other concerns. Based on information provided in your April 16 response, the Department is unable to take a "no action" position. We will, however, provide an "opinion" on the activities you reference in the last paragraph of your letter as those are the only activities that clearly fall under the jurisdiction of the Idaho Uniform Securities Act (2004) (IUSA).

You indicate the business activities of [REDACTED] as a lending arrangement under the purview of the contracting parties rather than being securities related. Your response to question number 1 in our March 31 letter describes [REDACTED] as the lender of funds which are note investments by your family members. The funds are pooled and then held in an Idaho bank account under the name of [REDACTED]. These funds will ultimately be deposited to an [REDACTED] brokerage account to facilitate the buying and selling of securities by a day trader located in Chicago. You and your brother [REDACTED] are members in [REDACTED]. [REDACTED] is responsible for tracking each individual's loaned funds and [REDACTED] manages the funds. You are the managing member of [REDACTED].

The definition of a "Security" under the IUSA § 30-14-102(28) includes a note, evidence of indebtedness, and certificate of interest or participation in a profit sharing agreement. "Security" also includes as an investment contract an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. "Common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

With consideration to the above you and [REDACTED] appear to be gathering borrowed funds from outside investors which are comingled and deposited in [REDACTED], the common enterprise, which you manage and control through [REDACTED], or persons other than the investor. Pooled funds from family members (evidenced by notes) are deposited in [REDACTED] then re-loaned to [REDACTED] which, when repaid, generate profits in the form of interest and fees. There is an expectation of profits.

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It appears that the notes issued and the subsequent pooling of those funds is an issuance of a security as defined by § 30-14-102(28) of the IUSA. Based on information you provided it appears that [REDACTED] is an issuer as defined under § 30-14-102(17) and you and [REDACTED] are agents of the issuer as defined under § 30-14-102(2). Please respond to us with information as to how these securities will be qualified under Idaho and federal law.

Based on the information we have received to date, we view the pooling of funds referenced above as under jurisdiction of the IUSA. Because many activities described in your request are not fully described or are not clearly within the purview of this Department, we decline to opine on whether the proposed business model in its entirety, is in compliance with the IUSA.

Sincerely,



Walt Bitner
Securities Analyst

April 16, 2014

Walt Bitner
Securities Analyst
Idaho Department of Finance

RECEIVED
2014 APR 16 AM 10:16
DEPT OF FINANCE

Re: Request for No Action Letter/Opinion

Dear Mr. Bitner,

It was a pleasure speaking with you about my request. I have taken steps to answer the remaining questions, which should clarify the relationship and give sufficient background to further the process. Although we have spoken about several of the items, I understand that the Department will require a written record of all issues. So I endeavor to articulate herein all the topics we have discussed and all those that remain in question.

Your summation in paragraph 2 of your letter is an accurate assessment of the proposed business relationships. I agree that it does describe an unusual business structure. I will address each of the numbered requests though some will overlap.

1. [REDACTED] is authorized to introduce [REDACTED] to lenders, but will only introduce it to [REDACTED]. [REDACTED] will be lending funds owned in whole by my immediate family and various family members, ranging from brothers to brother-in-law. The funds are comingled and one brother, [REDACTED], is responsible for tracking any loaned funds. In this case the initial loan amount will be \$80,000.00, but [REDACTED] may borrow up to \$100,000.00 as stated in section 2.1 of the Lending and Security Agreement.

The BD is required to obtain an independent AML audit annually. All BDs must follow WSPs, (Written Supervisory Procedures). The key component is to "know the parties". The BD is familiar with all controlling individuals for the entities, and has on file all relevant tax identification numbers and photo IDs. [REDACTED] states that it is in compliance. At your request Mr. [REDACTED] is available to discuss this topic with you.

2. [REDACTED] will sign all relevant bank documents in order to open an Idaho bank account. [REDACTED] will authorize [REDACTED] to sign for that account as the manager. The account is for the specific purpose of loaning funds, but that is well documented and acknowledged by the broker, on the Client Authorization and Risk Addendum documents. The BD has copies of all documents including Lending and Management Agreements.

Neither FINRA nor the SEC places restrictions on traders borrowing funds. The BD is informed of the loan by written and verbal communication at the

time a loan is funded. [REDACTED] is aware that in a catastrophic loss situation [REDACTED]'s loaned funds are at risk, and would be lost before the BD was affected. As such there are very strict guidelines in place to prevent such an occurrence. No overnight positions are held. There is a "Real Time" risk monitor. The BD has a "kill switch" which cancels all orders instantly. No naked options are allowed. [REDACTED] also monitors the account daily.

3. In the event of an unacceptable drop in equity or other situation of concern, [REDACTED] would follow [REDACTED]'s instructions to enforce Section 2.4 of the agreement. An example situation might be the following: [REDACTED] incurs a large loss and is unable to exit a large position prior to the market close. [REDACTED] would contact [REDACTED] and the BD and state that the account is to be placed on closing transactions only. At that point [REDACTED] could also state that loaned funds are not to be utilized in any calculations. The money is still at risk as long as it remains in the account, and the BD would retain its rights to the funds.
4. Mr. [REDACTED] is the manager of [REDACTED]. His duties are those germane to the operation of [REDACTED]. [REDACTED] is traded by Mr. [REDACTED] and occasionally by his clerk when Mr. [REDACTED] is not at his computer. [REDACTED] does not on-lend to anyone. None of the entities will on-lend. [REDACTED] and [REDACTED] have each done business with the BD many times in the past. [REDACTED] contacted [REDACTED] and asked to borrow funds. [REDACTED] is a customer of the BD.
5. [REDACTED] was unaware of any enforcement action against Mr. [REDACTED]. Having reviewed the complaint and agreement, [REDACTED] is not concerned but appreciates the Department bring the matter to its attention. [REDACTED] does not believe that Mr. [REDACTED] is involved in the "business cycle" as verbally articulated.
6. I recognize that the Department is concerned. The complaint against [REDACTED] was for providing "access" to a "bad actor", who traded for a company, which borrowed funds from [REDACTED]. Within months of the time the action was brought, the actual BD who held the [REDACTED] account ceased operations, and could not be utilized to defend [REDACTED]. Without admitting or denying the allegations, I chose to pay the penalty rather than spend much more money, time and energy to fight. I will provide my [REDACTED] letter for your review. I see no similarity between the business operations then and now. I will gladly expound upon the differences, if required, but will state that the [REDACTED] is loaning money only, and has no other tie of any kind to [REDACTED], including "providing access".

I very much appreciate your consideration and diligence in this matter. I hope that I have been able to shed sufficient light on the proposed relationship and demonstrate that the activity is not directly securities related, but rather is a lending arrangement within the purview of the contracting parties. I also would

like to mention that FINRA, the state of Illinois and the SEC audit the BD. Although this is an unusual business endeavor it is all in good faith, and we believe perfectly legal and in keeping with all FINRA and SEC requirements and guidelines, both specified and implied.

[REDACTED]

Managing Member



IDAHO
DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

March 31, 2014

[REDACTED]

Re: Request for No Action Letter/Opinion

Dear Mr. [REDACTED]:

In your letter received by the Department on February 21, 2014, on behalf of [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]), you appear to be requesting assurance from the Department that it will not take enforcement action upon implementation of the described business activities. As additional information, you enclosed a Management Agreement, Lending and Security Agreement, Client Authorization Form, Indemnification Agreement and Risk Addendum to Management Agreement.

Your letter describes an unusual and obscure business structure involving three LLCs, an Idaho bank account, a broker dealer firm and a brokerage account. [REDACTED] is a lender. [REDACTED] provides loans to the borrower, [REDACTED] ([REDACTED]) through deposits in an Idaho bank account. [REDACTED] borrows money from [REDACTED] for trading pursuant to the terms and conditions of the Lending and Security Agreement. [REDACTED] loan proceeds are deposited in the [REDACTED] Idaho bank account then deposited in the [REDACTED] brokerage account # [REDACTED] at [REDACTED], the broker and clearing firm (BD) to buy and sell securities. [REDACTED] is described as the Specific Function Manager that monitors trading, oversees lending parameters and limits, introduces [REDACTED] to lenders, arranges loans and may remove funds from the trading account. [REDACTED] has control over all funds pursuant to the Management Agreement. It appears [REDACTED] will be hired by [REDACTED] and compensated by [REDACTED].

The information provided does not provide sufficient detail to determine whether or not a "no action" by the Department is warranted. We request that you provide the following in writing:

1. Section #2 of the Management Agreement stipulates [REDACTED] may introduce [REDACTED] to lenders and arrange loans to [REDACTED]. [REDACTED] is the lender but we are unclear about the specific sources of loan funds. Are loan funds from a single source or separate sources? Are funds comingled? If from separate sources, how does [REDACTED] insure funds are provided in a manner consistent with FINRA AML requirements? Please clarify the source and amount of all loan funds, lenders name and terms and conditions of the loans referenced.
2. Your letter indicates that clearing firms generally require that funds come into trading accounts from "like accounts", specifically, accounts with the same name. [REDACTED] has set up

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an ██████ Idaho bank account for the sole purpose of facilitating loan proceeds from ██████ to ██████. This appears to conceal the true source of funds, which are loans from ██████ to ██████. Please explain how this "labeling" of a bank account meets FINRA rules and compliance with the BD's policies and procedures. How does the BD verify sources of funds? The purpose of ██████ loans is to leverage ██████'s ability to increase trading. It is unclear if the BD could turn to the borrowed funds in case of a catastrophic loss and a margin call. It may be problematic if the BD depended on the borrowed money for extension of margin credit but could not seize those funds when losses occurred, thus adversely affecting the BDs capital position.

3. Section 2.4 of the Lending and Security Agreement stipulates that the Borrower (██████) understands that the loan placed in the Accounts will not be used in calculating buying power, maintenance, or Reg. T calculations without Lender approval. The BD did not sign this agreement. What is the BDs interpretation of who has rights to funds on a worst case scenario? See comments #2.
4. ██████████ has signed the Lending and Security Agreement as manager of ██████ (borrower). We do not find Mr. ██████ to be currently registered in the securities industry in any capacity. What does Mr. ██████ actually manage? Please explain Mr. ██████'s duties and responsibilities. Does ██████ on-lend to ██████████, the Broker and Clearing Firm? Will ██████ and/or the Broker and Clearing Firm on-lend to other clients of the Firm such as individual day traders for any purpose including maintenance of margin calls? Why use Mr. ██████ and a BD Firm located in Chicago? How are Mr. ██████ and the BD connected?
5. We are concerned about the past enforcement action taken by the SEC against Mr. ██████ for engaging in manipulative trading scheme. As indicated above Mr. ██████ appears to be involved in trading activities but is no longer registered in the securities industry. Please clarify Mr. ██████'s role in the business cycle.
6. We are concerned about the past enforcement action taken by the SEC against you and ██████████ during 2012 for extending market access without registration. We do not find you or ██████████ to be registered in the securities industry in any capacity. There appear to be similarities in business operations then and now. Please clarify differences in operations then and now. What's changed?

Please respond to the above comments in writing so that the Department may respond accordingly. Thank you for your cooperation.

Sincerely,



Walt Bitner
Securities Analyst

Idaho Department of Finance
P.O. Box 83720
Boise, ID 83720-0031

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2014 FEB 21 PM 12:33
DEPT OF FINANCE

Re: No-Action and Opinion Request

To Whom It May Concern,

This is a submission on behalf of [REDACTED] and [REDACTED]. The following is a description of the business currently being undertaken by the LLCs.

Attached are five documents, which define the relationship between the above entities and the Borrowing entity with which they have contracted.

Before moving to the documents, some background information is herewith provided. [REDACTED] ([REDACTED]) is loaning money to [REDACTED] ([REDACTED]). The borrowed money is utilized by [REDACTED] to buy and sell securities in their trading account located at a brokerage. [REDACTED] ([REDACTED]) is hired by [REDACTED] as a Specific Function Manager, with a primary obligation to protect the Lenders funds. [REDACTED] receives its compensation from [REDACTED]. [REDACTED] and the broker are both domiciled in Illinois, with operations located in Illinois. The Compliance Officer at the brokerage where the [REDACTED] account is held has approved these relationships and all documents thereto.

The first document is the Management Agreement. Item 2 delineates the management aspects of [REDACTED], which are limited in scope. Please note that [REDACTED] authorizes that an account be set up at an Idaho bank in the name of [REDACTED], but over which [REDACTED] will have complete authority. The purpose for the bank account is as follows: Clearing firms generally require that funds come into trading accounts from "like accounts", specifically, accounts with the same name. This solution is the only way to ensure that lender funds are fully protected:

The lender might alternatively send funds to a Bank account controlled by borrower, but lender has no guarantee that said funds would flow from borrower's Bank account to borrowers Trading account. If, for whatever reason the funds did not arrive at the trading account, it could result in a protracted lawsuit in a foreign jurisdiction to attempt to recover funds. Lenders have decided that this option is imprudent and impractical. Notwithstanding, we completely understand that the solution is certainly unusual. But we ask you to consider the fact that this is an agreement between sophisticated parties, and as such, we request that they might be allowed broad latitude in conducting business affairs.

A second point we bring to your attention is that [REDACTED] has control over all funds in a securities account, and their approval is needed for withdrawal of ANY funds. In this case, the broker contacts [REDACTED] and states that [REDACTED] would like to remove X

amount from the account. [REDACTED] then sends an email approving said request. The broker knows exactly how much [REDACTED] has loaned and would not allow [REDACTED] to overstep its bounds and affect any transfer which exceeded its authority.

The Lending Agreement is fairly straightforward. [REDACTED] is loaning money to [REDACTED] at a specified rate (4.1) for deposit into a specified account (4.5). This agreement includes the signatures of lender, borrower and specific function manager.

The third agreement is the Client Authorization Form. This document stipulates that, "All Transfers of money out of the trading account must be approved by [REDACTED]. Borrower, special function manager and broker have signed the document.

Next is the indemnification by borrower to the benefit of [REDACTED] and [REDACTED].

The last document is a Risk Addendum signed by [REDACTED], [REDACTED] and broker. The purpose of this document is to memorialize [REDACTED]'s authority to shut down trading in order to avoid a catastrophic loss in the account. We now revisit a situation in which [REDACTED] would have authority and control over a securities account in order to protect lender funds. We find neither precedent nor mention which addresses this situation in Securities Law, whether it be U.S. Code, SEC regulations, proposed or final Rules, or Staff Interpretations, including Bulletins, Interpretations and Guidance Topics.

In summary we see two areas atypical of lending businesses we have encountered. The first is the opening of a bank account in a Borrower name, and the Borrower granting control over that account. The second is the control of any withdrawals from the trading account.

Having said that, it does not appear as though these activities are inconsistent with SEC and FINRA Laws and Regulations and Idaho Securities Codes, and Regulations.

As stated previously, the broker's Compliance Officer has approved the format. The broker receives annual audits from both FINRA and the SEC. The broker and Borrower are domiciled in Chicago, Illinois. We are requesting a No-Action and Opinion Letter confirming our conclusions.

Thank you for your consideration.

[REDACTED]
[REDACTED], Managing Member