IDAHO
DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

August 18, 2009

Re: Request for Exemption

Dear Mr.

This is in response to your June 26, 2009 request for no enforcement action position ("no-action") from this Department with regard to the proposed issuance and distribution of common stock pursuant to a judicially approved class action settlement. You have also asked that the Department confirm that ("Corporation") and its officers and directors are exempt from the broker dealer and agent registration requirements of the Idaho Uniform Securities Act (2004) (IUSA).

Background

Your letter indicates that the Corporation is currently a wholly-owned subsidiary of the is an options and derivative exchange and is a self-regulatory organization under the Securities Exchange Act of 1934. The is subject to regulation and oversight by the Securities and Exchange Commission ("SEC") and the proposed settlement transaction is exempt from federal securities registration requirements pursuant to Section 3(a)(10) of the Securities Act of 1933.

According to your letter, the Board of Directors of approved a restructuring transaction in which would change its organizational structure from a non-stock corporation owned by its members to become a wholly-owned subsidiary of the Corporation, which is organized as a stock corporation owned by its stockholders. The demutualization will be approved by a vote of the 's membership and the SEC before it is implemented.

Your letter indicates the and its directors were sued and named as defendants in a class action lawsuit challenging certain aspects of the demutualization. In settlement of the class action lawsuit, the entered into a Settlement Agreement with the plaintiffs. Although a final judgment has not yet been entered, by Memorandum Opinion, dated June 3, 2009, the

SECURITIES BUREAU
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Delaware Court preliminarily approved the Settlement Agreement and concluded that the Settlement Agreement was "fair, reasonable and adequate." It appears from the information you have provided that there is one Idaho resident that will participate in this Settlement Agreement.

You have stated in your letter that a Notice of Pendency of Class Action, Proposed Settlement of Class Action, Settlement Hearing and Right to Appear was distributed to all interested parties over three and a half months in advance of the hearing on the fairness of the settlement and provided all interested parties the opportunity to be heard at the hearing. The issuance and distribution of the Class B Shares have been judicially approved as part of a fairness hearing, and the Class B Shares will be issued in exchange for the claims of the Group A Participating Class Members (as defined in the Settlement Agreement).

Exemptions

The IUSA §30-14-202(22)(b) provides an exemption from the securities registration requirements for any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interest, or partly in such exchange and partly for cash. As you have indicated, the Corporation believes that although the issuance and distribution of the Class B Shares in the settlement may not specifically be a "reorganization," it would be reasonable to base the no-action position on §30-14-202(22)(b) since (i) there will be an issuance of securities in exchange for the outstanding claims of the settlement class members, (ii) all interested parties were notified of the fairness hearing, (iii) the issuance and distribution of the Class B Shares was judicially approved following the fairness hearing, and (iv) the Class B Shares will only be issued if the demutualization transaction is completed.

Additionally, it is your position that the registration of the Class B Shares is not in the public interest or necessary for the protection of the Settlement Class Members as (i) the class members are protected by the judicial approval of the Settlement Agreement, (ii) there has been no "offering" of securities as the class members were not solicited to participate in the class, (ii) no investment decision was made or will be made, since the Settlement Class Members are not able to opt-out of the class, (iv) each Participating Group A Class Member, in order to be eligible to receive the stock, must have held a significant amount of stock in [redacted] (a national commodity exchange) and a B-1 membership in [redacted], each of which evidences a level of sophistication and familiarity with markets and securities not possessed by the public at large, and (v) the Settlement Class Members will be exchanging claims for stock and will not be paying any additional consideration, and there has not been, and will not be, any general solicitation except for the required class notification.

With consideration to your representations to us, we concur that the Corporation's above transaction involving the issuance of Class B Shares in the Corporation should be exempt from registration requirements.

You have also asked that the Department confirm your assessment that the Corporation and its officers and directors are exempt from the registration requirements under § 30-14-402(b)(3) of the IUSA. You have indicated that certain officers and directors of the Corporation may be performing only ministerial functions with respect to the issuance of the Class B Shares and will

not be receiving any additional compensation for those functions. We agree with the Corporation's assessment that an individual who represents an issuer with respect to the offer and sale of the issuer's own securities and who is not compensated in the connection with the individual's participation by the payment of commission or other remuneration based, directly or indirectly, on transaction in those securities, is exempt from registration requirements of the IUSA.

Summary

In light of the foregoing, we will recommend to the Director that no enforcement action be taken to assert any violations of §30-14-202(22)(b) and that the subsequent qualification of the agents in connection with this offering may be met under § 30-14-402(b)(3) of the IUSA, if the transactions are offered under the circumstances set forth in your letter.

Please be advised that this "no action" position is based solely on the information you provided and your representation of the facts, and any different facts or circumstances might require a differing conclusion. Moreover, this letter only expresses the Department's position on the enforcement action and does not purport to express any legal conclusion regarding the applicability of the statutory or regulatory provisions of the IUSA.

If you have questions or comments regarding this matter, please contact the undersigned.

Sincerely,

Nancy C. Ax

Nancy C. Ax
Securities Analyst

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STATE OF IDAHO
DEPT OF FINANCE

June 26, 2009

Marilyn T. Chastain
Idaho Department of Finance
800 Park Blvd. Ste. 200
Boise, Idaho 83712

Re: Request for Exemption from Registration for Class B Common Stock of

Dear Ms. Chastain:

We are writing on behalf of our client , a Delaware corporation (the "Corporation"), in connection with the issuance by the Corporation of shares of its Class B Common Stock (the "Class B Shares") pursuant to a judicially approved class action settlement. As indicated below, the transaction is exempt from federal securities registration requirements pursuant to Section 3(a)(10) of the Securities Act of 1933 (the "Securities Act"). On behalf of the Corporation, we respectfully request the issuance by your department of a letter to the effect that the issuance of the Class B Shares is exempt from registration under the registration provisions of the Uniform Securities Act of the State of Idaho (the "Act"), or, in the alternative, that the Department will not recommend any enforcement against the Corporation if the Corporation issues the Class B Shares without registration. We also request that you confirm that the Corporation and its officers and directors are exempt from the broker-dealer and agent registration requirements of the Act with respect to the issuance.

The Corporation is currently a wholly-owned subsidiary of the Incorporated, a Delaware membership corporation ("") . is one of the world's leading options and derivative exchanges. is a self-regulated organization under the Securities Exchange Act of 1934 and as such is subject to regulation and oversight by the Securities and Exchange Commission ("SEC"). The Board of Directors of has approved a restructuring transaction in which would change its organizational structure from a non-stock corporation owned by its members to become a wholly-owned subsidiary of the Corporation, which is organized as a stock corporation owned by its stockholders. This type of organizational restructuring has been completed by many exchanges over the past few years and is sometimes referred to as a "demutualization." The demutualization will need to be approved by a vote of s membership and the SEC before it can be implemented.

On August 23, 2006, and its directors were sued (the "Exercise Right Litigation") in the Court of Chancery of the State of Delaware (the "Delaware Court") by the , the parent corporation of the and two members of the who purported to represent a class of individuals ("Exercise Member

Claimants") who claim that they were, or had the right to become, members of [redacted] pursuant to [redacted]'s Certificate of Incorporation, which granted to full members of [redacted] the right to be members of [redacted] without having to acquire a separate [redacted] membership (this right was commonly referred to as the "Exercise Right"). The plaintiffs sought a judicial declaration that Exercise Member Claimants were entitled to receive the same stock and other consideration in [redacted]'s proposed demutualization as [redacted] members, and an injunction to bar [redacted] and [redacted]s directors from issuing any stock to [redacted] members as part of the proposed demutualization, unless Exercise Member Claimants received the same stock and other consideration as [redacted] members.

On July 12, 2007, [redacted] acquired [redacted] through the merger of [redacted] into [redacted] (the "[redacted] Merger"). The announcement of the [redacted] Merger required [redacted] to determine the effect of the [redacted] Merger on the Exercise Right. [redacted]'s determination, which was reflected in an interpretation of Article Fifth that was filed with and approved by the SEC, was that following the completion of the [redacted] Transaction there would no longer be any members of the [redacted] who would qualify to become or remain a member of [redacted] pursuant to the Exercise Right.

After two years of litigating issues in Delaware, on August 20, 2008, [redacted] entered into a Stipulation of Settlement (the "Settlement Agreement") with the plaintiffs pursuant to which the plaintiffs agreed to dismiss the Exercise Right Litigation, with prejudice, in exchange for the settlement consideration (described below). The Settlement Agreement was preliminarily approved by the Delaware Court on August 22, 2008. A copy of the Settlement Agreement is attached hereto as Exhibit A. On December 16, 2008, after appropriate notice to all class members, the Delaware Court conducted a lengthy hearing to consider whether to approve the Settlement Agreement and to consider the objections filed by certain members of the plaintiff class. Although a final judgment has not yet been entered, by Memorandum Opinion, dated June 3, 2009, the Delaware Court certified the class, approved the Settlement Agreement and concluded that the Settlement Agreement was "fair, reasonable and adequate."

The Settlement Agreement calls for a non-opt out settlement class, which means that anyone in the settlement class is bound by the Settlement Agreement and does not have the right to pursue separate claims against [redacted]. The settlement class consists of two groups:

- The first group (Group A) consists of all persons who, prior to August 22, 2008, simultaneously owned or possessed at least one [redacted] B-1 membership, at least one Exercise Right Privilege and at least 27,338 shares of [redacted] stock or (after the [redacted] Merger) 10,251.75 shares of [redacted] stock. An Exercise Right Privilege is the privilege, whether or not that privilege or right was not attached to a [redacted] Membership, that when held together with a [redacted] B-1 Membership and the requisite shares of [redacted] Common Stock (or following the [redacted] Merger, shares of [redacted] stock) constituted the Exercise Right. In order to receive a share of the settlement consideration paid to Group A, the members of Group A also must (1) have owned the package of three interests as of 5:00 p.m. (central time) on October 14, 2008

and continued to own that package until October 31, 2008 and (2) have met certain other eligibility and procedural criteria contained in the Settlement Agreement. We refer to members of Group A as "Participating Group A Settlement Class Members" and we refer to the package of interests described in this bullet as a "Group A Package."

- The second group (Group B) consists of all persons who owned an Exercise Right Privilege as of 5:00 p.m. (central time) on October 14, 2008 but are not members of Group A, and their transferees and assigns. In order to receive a payment from the Group B settlement consideration, members of Group B must have met certain other eligibility and procedural criteria contained in the Settlement Agreement. We refer to members of Group B as Participating Group B Settlement Class Members.

Under the Settlement Agreement, Participating Group A Settlement Class Members will share in an equity pool which will consist of a number of the Corporation's Class B Shares equal to the product of (i) 0.21951220, times (ii) the aggregate number of shares of Class A Shares issued in the demutualization to owners of regular [redacted] memberships (i.e., a membership that was made available by [redacted] in accordance with its Rules). In addition, both Participating Group A and Group B Settlement Class Members will share in a cash pool equal to $300,000,000. For each Exercise Right Privilege that a Participating Group B Settlement Class Member owned on October 14, 2008, that class member will receive $250,000 from the cash pool.[1] The remainder of the cash pool, after making a minor payment to one of the class representatives, will be distributed to the Participating Group A Settlement Class Members on a pro rata basis for each Group A Package the Group A class member owned, subject to a maximum, based on the total number of Group A Packages that existed on October 14, 2008.

As a result of the Settlement Agreement, the proposed demutualization has been structured such that each regular [redacted] membership that is held by a [redacted] member on the date of the demutualization transaction will be converted into the right to receive shares of Class A Common Stock of the Corporation (the "Class A Shares"), which in the aggregate will amount to approximately 82% of the total shares of common stock in the Corporation that will be outstanding following the issuance of stock in the demutualization and the issuance of stock to the Settlement class Members. The Group A Participating Class Members will be issued the Class B Shares of the Corporation, which in the aggregate will represent approximately 18% of the total shares of common stock of the Corporation that will be outstanding following the following the issuance of stock in the demutualization and the issuance of stock to the Settlement Class Members.

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[1] The payment to the Group B class members is not the transaction that is the subject of this letter. The description of the payments to the Group B class members is being provided solely to provide information necessary for a complete understanding of the settlement consideration. In addition to the cash and equity pools described above, certain class members are eligible to receive under the Settlement Agreement certain refunds of fees paid to the [redacted] in connection with such class member's activities on the Exchange operated by [redacted] We do not believe these other aspects of the Settlement Agreement are relevant to the issue presented here; therefore, we have excluded any discussion of those potential payments.

According to the information provided to by counsel to the Settlement Class Members, there are approximately 850 Group A Participating Class Members, residing in approximately 30 states and various foreign jurisdictions, eligible to receive the Class B Shares under the Settlement Agreement. Of those participants, we believe that one resides in Idaho, representing one Group A Package. As such, we believe that residents of Idaho are entitled to receive less than 0.2% of the Class B Shares to be issued pursuant to the Settlement Agreement. The final terms of the demutualization have not yet been set, including the total number of shares to be issued. As a result, we do not know the exact number of Class B Shares that would be issued in Idaho. Also, because the Corporation does not have any common stock outstanding, there is no market in the stock and no per share market price.

The Notice of Pendency of Class Action, Proposed Settlement of Class Action, Settlement Hearing and Right to Appear was distributed to all interested parties over three and a half months in advance of the hearing on the fairness of the settlement and provided all interested parties the opportunity to be heard at the hearing. The issuance and distribution of the Class B Shares have been judicially approved as part of a fairness hearing, and the Class B Shares will be issued in exchange for the claims of the Group A Participating Class Members (as defined in the Settlement Agreement).

The issuance of the Class B Shares is exempt from registration under Section 3(a)(10) of the Securities Act, which exempts from the Securities Act, securities that are issued "in exchange for one or more *bona fide* outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions for such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court . . .".

Likewise, Section 30-14-202(22)(b) of the Act provides an exemption from the securities registration requirements of the Act for any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash. Although the issuance and distribution of the Class B Shares in the settlement may not specifically be a "reorganization," we believe that it would be reasonable to base an exemption on Section 30-14-202(22)(b) since (i) there will be an issuance of securities in exchange for the outstanding claims of the settlement class members, (ii) all interested parties were notified of the fairness hearing, (iii) the issuance and distribution of the Class B Shares was judicially approved following the fairness hearing, and (iv) the Class B Shares will only be issued if the demutualization transaction (which is a reorganization) is completed.

We also believe that requiring registration of the Class B Shares is not in the public interest or necessary for the protection of the Settlement Class Members for the following reasons: (i) the class members are protected by the judicial approval of the Settlement Agreement, (ii) there has been no "offering" of securities as the class members were not solicited to participate in the class, (iii) no investment decision was made or will be made, since the Settlement Class Members were not able to opt-out of the class, (iv) each Participating Group A Class Member, in order to be eligible to receive the stock, must have held a significant amount of stock in (a national commodity exchange) and a B-1

membership in [redacted], each of which evidences a level of sophistication and familiarity with markets and securities not possessed by the public at large, and (v) the Settlement Class Members will be exchanging claims for stock and will not be paying any additional consideration, and there has not been, and will not be, any general solicitation except for the required class notification.

In addition, we have reviewed the September 20, 2005 No-Action Letter (the "No-Action Letter") issued by the Idaho Department of Finance, Securities Bureau (the "Department") in which the Department exempted from registration under Section 30-14-202(22)(b) the proposed issuance and distribution of common stock pursuant to a judicially approved class action settlement substantially similar to the request submitted by the Corporation. The Department's reasons for the exemption provided in the No Action Letter are substantially similar to the reasons we set forth herein.

We respectfully request that the Department issue a no-action letter to the effect that the issuance of the Class B Shares is exempt from registration under the registration provisions of the Act, or, in the alternative, that the Department will not recommend any enforcement against the Corporation if the Corporation issues the Class B Shares without registration under the Act.

Section 30-14-402(b)(3) of the Act exempts from the agent registration requirements of the Act an individual who represents an issuer with respect to the offer or sale of the issuer's own securities and who is not compensated in connection with the individual's participation by the payment of commission or other remuneration based, directly or indirectly, on transactions in those securities. Section 30-14-102(4)(b) of the Act excludes an issuer from the definition of "broker-dealer." Certain officers and directors of the Corporation may be performing only ministerial functions with respect to the issuance of the Class B Shares and will not be receiving any additional compensation for those functions.

Furthermore, the above-referenced No-Action Letter issued by the Department recommended to the Director of the Department that the qualification of the agents in connection with an offering substantially similar to the transactions described in this letter may be met under § 30-14-402(b)(3) of the Act.

We respectfully request that you confirm that the Corporation and its officers and directors are exempt from the broker-dealer and agent registration requirements of the Act.

We submit herewith our firm's check in the amount of $50.00 payable to Idaho Department of Finance in payment of the fee.

Thank you very much for your assistance. Should you have any questions or require any additional information, please do not hesitate to contact me at (or at . Your prompt attention to this request for exemption, or, in the alternative, no action, would be greatly appreciated.

Sincerely,

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