

DIRK KEMPTHORNE
GOVERNOR



GAVIN M. GEE
DIRECTOR

STATE OF IDAHO
DEPARTMENT OF FINANCE
700 W. STATE STREET, 2ND FLOOR
P. O. BOX 83720
BOISE ID 83720-0031
Website: <http://finance.state.id.us>

October 21, 2003

Re: ("Company")

Dear M

This is in response to your September 23, 2003 request for a no action position from this Department with regard to the offer and sale of medical savings account products and services ("MSA").

As represented in your letter, a MSA is an individual or joint savings account, which is designed to be utilized by the account holder to pay first dollar expenses for high deductible health insurance costs. In the past, it appears that the MSA product was limited to a cash value that accrued at a local saving institution. More recently, the product was modified to offer a securities investment option for participants wishing to invest in Mutual Funds ("Mutual Funds").

MSAs are sold by employees of the Company and by licensed insurance professionals acting as its independent agents. Furthermore, persons offering the Company's MSAs do not solicit, promote, recommend, offer or sell investments in the Mutual Funds (nor are they compensated in any manner with respect to or by the mutual funds.)

Your letter indicates that the Company has undertaken steps to ensure that MSA account holders and persons offering its MSAs are aware of the limited role of the Company and its agents with respect to the Mutual Funds. These steps include the following:

- Eliminating all specific information (e.g. list of funds, application forms, transfer requests) and maintaining only a general reference to the Mutual Funds on its website so new or existing MSA holders are referred directly to the Mutual Funds or their registered representative for information and investment therein.

Banks and Savings Banks	(208) 332-8005	PHONE:	(208) 332-8000	Supporting Services	(208) 332-8001
Credit Unions	(208) 332-8003	Fax:	(208) 332-8098	Mortgage Companies	(208) 332-8002
Securities	(208) 332-8004	Director's Fax:	(208) 332-8097	Finance Companies	(208) 332-8002
Money Transmitters	(208) 332-8003	Securities Fax:	(208) 332-8099	Collection Agencies	(208) 332-8002

EQUAL OPPORTUNITY EMPLOYER

- Maintaining only a general reference to the Mutual Funds on all new printed advertising materials so new or existing MSA holders are referred directly to the Mutual Funds or their registered representative for information and investment therein.
- Providing periodic written policy notices and statements to employees and existing agents offering the Company's MSAs stating that such person are not authorized to and shall refrain from soliciting, promoting, recommending, offering or selling investments in the Mutual Funds.
- Regarding the application to become a Company agent offering its MSAs, establishing a written acknowledgement that such persons are not authorized to and shall refrain from soliciting, promoting, recommending, offering or selling investments in Mutual Funds.

We do not necessarily agree with your assertion that the Company and its agents are not transacting business or acting in the capacity of an investment advisor or securities salesman. However, in light of your representations, we agree to recommend that a no-action position be taken with regard to any violation of the registration sections of the Idaho Securities Act. This is conditioned upon the Company's enforcement of the aforementioned steps.

Please be advised that this no-action position is based solely on your representations of the facts and different facts may require a different conclusion. Further, this letter only expresses the Department's position with regard enforcement action pertaining to registration and does not alter the Company's obligation of full disclosure and compliance with the antifraud and other provisions of the Idaho Securities Act.

If you have questions or comments regarding this matter, please contact me at (208) 332-8078.

Sincerely,

Ax (file copy)
Nancy C. Ax
Securities Analyst

RECEIVED
SEP 24 2003
DEPARTMENT OF FINANCE

September 23, 2003

Via Facsimile and US Mail

Nancy C. Ax
Securities Analyst
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031

RE:

Dear Ms. Ax:

This law firm represents _____, an Idaho limited liability company (“_____”). The purpose of this letter is to request that the Department, based upon the facts presented herein, issue a “no-action” position affirming that the Company and its agents will not be considered or deemed investment advisors or securities salesmen transacting business and required to register in those capacities under the Idaho Securities Act. This request is made pursuant to Idaho Code Section 30-1402(6)(i) and IDAPA 12.01.08.125.

As we discussed with you, _____ is engaged in the business of providing medical savings account products and services (“MSA”) to its customers. In general terms, an MSA is an individual or joint savings account, created with the tax benefits and attributes described below, which is designed to be utilized by the account holder to pay first dollar expenses for high deductible health insurance costs.

MSAs were created pursuant to federal legislation and are sometimes referred to as “Archer MSAs.” Under the Internal Revenue Code, contributions by eligible employers to an eligible employee’s MSA are tax deductible to the employer and tax free to the eligible employee. Similarly, contributions by certain eligible self-employed individuals to an MSA are tax deductible to that individual. In each case, earnings on the assets of an MSA are excluded from the eligible account holder’s taxable income and distributions from an MSA which are used to pay the deductible amount of insurance under a “high deductible” insurance policy are tax free.

has entered into an arrangement with (“ ”) under which creates the actual MSA and issues a debit card which the account holder can use to withdraw funds from the MSA. Each account holder has an option to place MSA funds in mutual funds (which are currently offered by the) (“Mutual Funds”). Transactions involving the Mutual Funds are conducted directly by the account holder with the Mutual Funds or the Mutual Funds’ registered representative.

MSAs are sold by employees of the Company and by licensed insurance professionals acting as its independent agents. Persons offering MSAs do not solicit, promote, recommend, offer or sell investments in the Mutual Funds (nor are they compensated in any manner with respect to or by the Mutual Funds).

The Company has undertaken steps to ensure that MSA account holders and persons offering its MSAs are aware of the limited role of the Company and its agents with respect to the Mutual Funds. These include the following:

- Eliminating all specific information (e.g. list of funds, application forms, transfer requests) and maintaining only a general reference to the Mutual Funds on its web site so new or existing MSA holders are referred directly to the Mutual Funds or their registered representative for information and investment therein.
- Maintaining only a general reference to the Mutual Funds on all new printed advertising materials so new or existing MSA holders are referred directly to the Mutual Funds or their registered representative for information and investment therein.
- Providing periodic written policy notices and statements to employees and existing agents offering the Company’s MSAs stating that such persons are not authorized to and shall refrain from soliciting, promoting, recommending, offering or selling investments in the Mutual Funds.
- Regarding the application to become a Company agent offering its MSAs, establishing a written acknowledgement that such persons are not authorized to and shall refrain from soliciting, promoting, recommending, offering or selling investments in the Mutual Funds.

In conclusion, based upon the facts described above, the Company does not believe it or persons offering its MSAs are or will be acting as investment advisors or securities salesmen and/or are or will be transacting business in those capacities. For the foregoing reasons, we request that the Department adopt a “no-action” position as requested above.

Nancy C. Ax
September 23, 2003
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Should you have any questions, please do not hesitate to contact me at

Sincerely,

cc: