



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

July 30, 2009

Re: Exemption Request

Dear M

We have reviewed your request for an exemption from the broker-dealer licensing requirements of the Idaho Uniform Securities Act (2004) ("the Act") dated March 11, 2009, and subsequent information submitted on June 29, 2009.

Although [redacted] has requested an exemption from Idaho's broker-dealer licensing requirements, it does not appear that an exemption is available under the Act that would exempt [redacted] activities from broker-dealer or broker-dealer agent registration requirements. However, pursuant to Section 30-14-605(d) of the Act and Rule 3 of the Rules Pursuant to the Act, the Department may issue a determination not to institute an action or proceeding against a person for engaging in a specified act, practice or course of business if the determination is consistent with the Act. Therefore, as we have discussed previously, the Department will consider your exemption request as a request for a "no-action" position.

According to information you have provided the Department, [redacted] wishes to publically market certificates of deposit ("CDs") offered by participating banking entities ("banks") to potential investors via a website at [redacted]. At the website, investors input the amount of funds they wish to invest in CDs and the desired term (3, 6, or 12 months, etc.). An automated "bidding" process ensues in which the highest CD rate offered by participating banks is determined for the stated criteria. If the investor indicates that they are interested in purchasing the CD at the quoted rate, [redacted] provides the investor contact information for the "winning" bank. The investor is under no obligation to consummate the transaction with the bank and the bank is not obligated to accept the deposit until the investor has satisfied the bank's standard eligibility requirements. If the investor opens an account at the bank, the bank pays a "small marketing fee" to [redacted].

As described in your request, [redacted] participation in the sale of CDs is limited to 1) providing the highest available rate from among the participating banks in response to the criteria

SECURITIES BUREAU
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provided by investors and, 2) providing that bank's contact information to the investor. In connection with the marketing of the CDs, will not:

- request any investor financial information that is not necessary to complete the bidding process,
- maintain any investor information received for the bidding process,
- charge any fees to or accept any fees from investors,
- provide advice to investors on selecting a particular rate or indicate a preference for a particular bank, or
- prequalify investors or otherwise determine an investor's suitability for a new account.

Based on the representations in request, including the letter to the Maine Office of Securities, the "Description of letter, and your June 29, 2009, email response providing further information, the Department will take a "no action" position with regard to the broker-dealer and broker-dealer agent registration requirements under the Act that may apply to and its employees as a result of its activities.

The Department's position is based on the written facts presented by If those facts or circumstances change, are inaccurate, or incomplete our position may be different.

Please contact the undersigned at with any questions regarding these comments,

Sincerely,



Kurt Merritt
Securities Analyst
Department of Finance

Kurt Merritt
Securities Analyst
Idaho Dept of Finance – Securities Bureau
800 Park Blvd.
Boise, ID 83712

2009 MAR 16 AM 11:01
STATE OF IDAHO
DEPT OF FINANCE

March 11, 2008

RE: availability for Idaho Residents to obtain Bank Certificate of Deposits

Dear Mr. Merritt:

Further to our discussion, enclosed is information about a service that allows online consumers to shop more efficiently and get better rates on FDIC insured bank certificates of deposits (www.).

This letter is to respectfully request an exemption from Idaho's broker-dealer licensing requirements for our CD service.

Is a product of . It is a patent pending automated reverse auction system in which our 125 member banks compete on a customer by customer basis to attract new CD accounts at their banks. We opened our system in June 2008 and have been growing rapidly as many consumers are investing in bank CD's in the current market turmoil.

When we launched, based on advice of counsel, we decided not to make the CD service available to consumers in certain states. It appears that those states (including Idaho) consider a bank CD to be a security and we do not have a securities dealer license. We are now addressing this because we have many requests from consumers in these states, in fact hundreds of visits per month from consumers in Idaho.

By way of background, I have enclosed a 2004 letter from the OTS to our counsel (attachment 1). At the time, they were representing a business for which they researched all 50 state banking and securities laws, and the OTS was commenting on their questions about these laws. At the bottom of page 4 and top of page 5 state licensing requirements are noted, and footnote 6 at the bottom of page 5 indicates which states consider bank CD's to be securities.

We have addressed this issue with the State of Maine and were very pleased to receive an exemption from the broker-dealer licensing requirements by the Maine Office of Securities (attachment 2). This was done after an evaluation of our service by attorney and Assistant Securities Administrator Stephen Diamond, and Securities Administrator Bonnie Russell. Mr. Diamond mentioned that the intention of the securities dealer requirement was to cover aggregated CD's sold by securities dealers, not the individual consumer CD's that our system supports.

I have also enclosed the complete description of the service that we provided to the Maine Office of Securities (attachment 3) and answers to their further questions that we provided by email (attachment 4).

very pleased to now be bringing this valuable service to Maine residents and hope that we may begin offering it in Idaho soon.

Please let me know if I can provide any other information or answer any questions at
or

Best regards,

VP, Sales

Enclosures:

Attachment 1 – 2004 OTS letter Identifying states that consider Bank CD's to be securities

Attachment 2 – Order of Exemption, Maine Office of Securities

Attachment 3 – Description of the service

Attachment 4 – Further questions and answers for Maine Office of Securities

Check for \$50 payable to State of Idaho

Kurt Merritt

From:
Sent: Monday, June 29, 2009 7:22 AM
To: Kurt Merritt
Subject: Exemption Request

Hi Kurt --

I apologize that I did not get this response to you sooner. I was pulled over to some other projects but have now wrapped those up.

If you would like me to send this response to you by regular mail, please let me know and I will do that.

Further to your additional questions in your April 15 letter:

1. Banks do not have to dedicated CD auction employees. core technology automates the bid response function in reverse auctions, allowing this process to be scaled. Using algorithms to emulate human behavior, banks can respond to the changing circumstances in each dynamic auction.

Each bank in our network has a private Seller Automated Engine (SAEJ). The bank sets an interest rate ceiling and a strategy; their SAEJ works under this ceiling varying the aggressiveness through the chosen strategy. When there is a new customer request, the Bank's SAEJ instantly evaluates it and then responds based on how the bank sets the controls.

has filed 4 major patent applications on this technology.

2. All banks have 2 choices regarding marketing fees, which are less than what banks tell us they pay for new customers with a newspaper ad:
 - a. Cost per lead (CPL) -- the bank pays a flat fee of \$47 (regardless of product or amount) when the customer takes action to accept the auction results
 - b. Cost per acquisition (CPA) -- bank pays a flat fee of \$109 (regardless of product or amount) when a new customer actually opens an account
 - c. These fees are subject to change but are the same for all banks

Thank you for your consideration of this and please let me know if you have any other questions.

Best regards,

7/21/2009