



IDAHO
DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

March 31, 2010

Re: Interpretive Opinion Request-

Dear M

This is in response to your October 30, 2009 request for an interpretive opinion with respect to the need for (the "Firm") to be registered as a broker-dealer, and for its personnel to be registered as agents pursuant to Sections 30-14-401 and 30-14-402 of the Idaho Uniform Securities Act (2004) ("IUSA").

Your letter and attachments indicate that the Firm was organized for the limited and sole purpose of lending stock to prime brokerage clients of a full-service broker/dealer registered with the Securities and Exchange Commission, in connection with short sale transactions. The prime brokerage clients of are generally institutions, but may include high net worth individuals. When a prime brokerage client of wishes to borrow stock, they will inform a registered representative of who will transmit the stock loan order to the Firm. The Firm's "back office" personnel will process the stock loan orders. Your letter indicates that the Firm's personnel will not have any direct sales contact with customers. Direct contact with customers will be handled by registered representatives. However, it appears that the Firm will require clients to provide collateral for securities loans and may also pay rebates back to the prime brokerage clients of Thus, it does not appear that the Firm will be dealing solely with a registered broker-dealer.

Section 30-14-401(b)(1)(B) states a broker-dealer with no place of business in Idaho which effects transactions in Idaho exclusively with other broker-dealers registered (or not required to be registered) under the IUSA is exempt from registration as a broker-dealer. Section 30-14-402(b)(2) extends this exemption to individuals employed by such broker-dealer.

Based on the facts as stated in your letter and the attachments and our analysis of those facts and how Section 30-14-401 applies, we do not concur that the Firm qualifies for the exemption set

SECURITIES BUREAU

Bureau Chief - Marilyn T. Chastain
800 Park Blvd, 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>

forth in Section 30-14-401(b)(1)(B) of the IUSA. Therefore, the agents of the Firm would not qualify for exemption under Section 30-14-402(b)(2) of the IUSA.

Please be advised that our interpretive opinion is based solely on the information you provided and your representation of the facts. Different facts or circumstances might require a differing conclusion.

Sincerely,

A handwritten signature in cursive script that reads "Nancy C. Ax". The signature is written in black ink and is positioned above the typed name.

Nancy C. Ax
Securities Analyst

Idaho Department of Finance

STATE OF IDAHO
DEPT OF FINANCE

October 29, 2009

Securities Bureau
Department of Finance
800 Park Blvd., Ste. 200
Boise, Idaho 83712

Re:

Request for Interpretative Opinion

Dear Sir or Madam:

On behalf of _____ a Delaware limited liability company (the "Firm"), and _____ a Delaware limited liability company ("_____"), we hereby request, pursuant to Section 30-14-605(d) of the Idaho Uniform Securities Act (2004) (the "Act") and Rule 3 promulgated thereunder, an interpretative opinion from your office with respect to the need for the Firm to be registered as a broker-dealer, and for any of its personnel to be registered as agents, pursuant to Sections 30-14-401 and 30-14-402 of the Act. In this regard, enclosed please find a check for \$50 in payment of the requisite filing fee pursuant to Section 30-14-605(d) of the Act and Rule 3 promulgated thereunder.

FACTS

As you may be aware, _____ is: (i) a full-service broker/dealer (CRD No. _____, registered as such with the Securities and Exchange Commission (the "SEC") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"); (ii) a member in good standing of the Financial Industry Regulatory Authority ("FINRA") and of most major securities exchanges; and (iii) a registered or licensed broker/dealer under the securities laws of all 50 states (including yours), the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

The Firm was organized on June 5, 2009, and has recently applied for registration as a broker/dealer with the SEC under the Exchange Act and for membership with FINRA (CRD No. 151470). In this regard, enclosed find copies of: (i) the Firm's Form BD; (ii) the Firm's Form NMA (without attachments); and (iii) the Firm's Business Plan, each as filed with FINRA. The following information concerning the Firm is derived from such filings.

Securities Bureau
October 29, 2009

The sole member of the Firm is _____, which is also the sole member of _____. The Firm will have one office, located at _____ 3rd Floor, New York, NY 10010, within the offices of _____ prime brokerage business; the Firm will not occupy separate office space from _____, nor does it intend to establish any branch offices. The Firm has been funded by an initial equity investment of \$300,000 from _____ (_____ investment was increased from the amount reflected in Item I.1 of the Firm's Business Plan – see Part IV.1 of the Firm's Form NMA). _____ also intends to fully fund the Firm with an additional equity investment of approximately \$130 million, following approval of the Firm's membership by FINRA, and prior to its commencement of operations.

The Firm has been organized for the limited and sole purpose of lending stock to prime brokerage clients of _____ ("Borrowers"), many of which Borrowers previously borrowed stock from offshore broker-dealers. The Firm is thus being established as a dedicated securities lending firm, based in the United States, in order to address market demand (following the failure of _____) that the counterparties to stock loan transactions be SEC-registered broker-dealers.

The Borrowers to whom the Firm will lend stock will generally be institutions, mainly hedge funds, although from time to time Borrowers may include high net worth individuals approved by _____ to open portfolio margin accounts. While such Borrowers will be deemed "customers" of _____ within the meaning of SEC Rule 15c3-3 under the Exchange Act, they will not be deemed "customers" of the Firm under that Rule, because persons to whom a broker/dealer lends stock are not considered to be "customers," for purposes of the Rule.

_____ will integrate marketing of the Firm's stock lending business into the overall marketing of _____ prime brokerage business; accordingly, the Firm will not carry out any independent marketing of its stock loan business or establish its own website. Further, the Firm will not conduct any market-making activities, distribute or maintain proprietary positions in any securities, or enter into any contractual commitments such as underwritings or other securities-related activities.

The Firm will not have any sales or "front-office" personnel of its own; rather, _____ will perform all front-office functions. Thus, when a prime brokerage customer of _____ wishes to borrow stock, it will inform a registered representative of _____, who will transmit the stock loan order to the Firm. In turn, such stock loan orders will be processed by _____ "back office" personnel "dual-hatted" with the Firm, all of whom will be existing credit and operations employees of _____ with sufficient stock lending experience, who will conduct such activities pursuant to a service agreement between _____ and the Firm, solely in a clerical or ministerial capacity (by reason of their limited activities, such "back office" personnel need

Securities Bureau
October 29, 2009

not be registered representatives of _____, although some have registered voluntarily). Such "back office" personnel will not have any direct sales contact with _____ customers; rather, any direct contacts will be handled by _____ registered representatives.

The Firm intends to utilize _____ current recordkeeping system to generate its required books and records, and will use _____ proprietary reporting and collateral monitoring systems to produce and make available daily activity reports of stock loan transactions (which reports will be made available to Borrowers daily through a website maintained by _____), and to monitor delivery and permissible types of collateral, including daily mark-to-market of collateral, and delivery of additional collateral, where required.

ANALYSIS OF THE ACT AND REQUEST FOR INTERPRETATIVE OPINION

Considering that: (i) the Firm will be registered as a broker-dealer under the Exchange Act and will be a member of FINRA; (ii) the Firm will have no place of business in your state; (iii) the Firm's business will be restricted to lending stock solely to Borrowers who are prime brokerage customers of _____, which Borrowers will primarily be institutional in nature or, in certain instances, high net worth individuals, and which Borrowers will not be "customers" of the Firm within the meaning of SEC Rule 15c3-3; (iv) the Firm will not market or otherwise offer its stock lending services itself, but rather _____ a registered broker-dealer under the Act, acting through its representatives registered under the Act, will determine whether a _____ customer wishes to borrow such stock from the Firm; (v) the Firm will act solely as principal for its own account in any stock loan transaction; (vi) the determination whether to lend stock to a particular _____ customer, the terms of any such stock loan, and the recordkeeping and collateral maintenance requirements with regard to any such stock loan, will be handled by "back office" dual employees of _____ and the Firm, who will be acting solely in a clerical or ministerial capacity; and (vii) the required books and records with respect to the Firm's business will be maintained by _____ on the Firm's behalf, it is respectfully submitted that it is unnecessary for the Firm to be separately registered as a broker-dealer, and for any of the _____ employees acting as dual employees of _____ and the Firm, to be registered as agents of the Firm, under the Act.

In this regard, we note that, pursuant to Section 30-14-401(b)⁽¹⁾~~(4)~~(B) of the Act, a broker-dealer with no place of business in your state which effects transactions in your state exclusively "with" other broker-dealers registered (or not required to be registered) under the Act is exempt from registration as a broker-dealer, which exemption also extends to the need for any individuals employed by such a broker-dealer to be registered as agents pursuant to Section 30-14-402(b)(2) of the Act. While it would appear that the Firm will be conducting its stock loan business "through," and not "with" _____, so that the foregoing provision arguably does not

Securities Bureau
October 29, 2009

literally apply to the Firm's business, it is respectfully submitted that [redacted] over-arching role in the conduct of the Firm's business (with all Borrowers being [redacted] customers), and, in particular, that the Firm's operations will be run solely by [redacted] personnel (both as regards the [redacted] registered representatives offering the Firm's stock lending services to [redacted] customers, as well as the [redacted] "back office" staff handling clerical and ministerial functions), should alleviate any investor protection concerns your office might have regarding the personnel conducting the Firm's business with Borrowers in your state.

Accordingly, we respectfully request an interpretative opinion from your office that it is unnecessary under these circumstances for the Firm and any of its personnel to be registered with your office under the Act (except to the extent that any individuals are required to be registered by reason of their positions with [redacted]).

We would greatly appreciate an expeditious response to this request, and we thank you for your consideration in this regard. Should you have any questions or require any additional information with respect to this matter, please call or e-mail the undersigned at [redacted] or, in my absence, [redacted] of this firm, at [redacted].

Please stamp the enclosed copy of this letter to acknowledge receipt of this filing and return same in the self-addressed stamped envelope provided for that purpose.

Very truly yours,

Enclosures