

April 15, 2014

Re: – Request for Interpretive Opinion/No-Action Position

Dear Mr

This is in response to your request for an interpretive opinion or no-action position concerning  
(Issuer) agent registration requirements under the Idaho  
Uniform Securities Act (2004) (IUSA) § 30-14-402(b)(3).

In your letter dated March 18, 2014, you indicate the Issuer is a holding company formed to promote the concept of an Idaho based life insurance company to serve the residents of Idaho. In doing so the Issuer hires sales persons to offer and sell securities to qualified investors on behalf of the Issuer. The director of marketing position oversees the efforts of marketing specialists whose duties and responsibilities are listed on page 2 of your letter. The listed activities of the marketing specialists appear similar to any generic solicitor type position including identification of sales opportunities, meeting with prospects, qualifying leads and closing the deal.

As is typical in sales, the marketing specialist must meet or exceed performance objectives. Although the marketing director and marketing specialists represent the Issuer with respect to the offer and sale of its own securities to qualified investors, there is no reference to any financial education requirements or knowledge of Idaho securities law as a prerequisite for either position.

You have indicated the marketing director receives a fixed salary of \$70,000 annually and the marketing specialists receive a fixed salary of \$2,500 per month. In addition to salary the marketing director is eligible for a bonus if certain goals are met and marketing specialists are eligible for a bonus if certain expense related goals are met. The Issuer's position with regard to agent registration under the IUSA is that since compensation of the marketing director and marketing specialists is a fixed salary with limited bonus opportunity and not commissions or other transaction based compensation the company should qualify for an exemption or no-action position.

The Department concurs with your analysis that "It is only if compensation is commission based or in some other manner dependent upon the transactions in securities that an individual must register". Therefore, if compensation is based in any way upon securities transactions, those individuals must register as an agent under the IUSA.

**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>**

The annual report (Form 10-K) for \_\_\_\_\_ at year end 2012 and year end 2013 lists certain relationships and affiliations with smaller businesses on page 12 and 13.

\_\_\_\_\_ is listed as a development stage company that has not conducted operations apart from raising capital. If the Issuer has no income from operations to support payment of salary to its employees, compensation must be dependent upon securities transactions to compensate its sales staff.

Therefore it is the Department's position that registration requirements for the Issuers sales staff will apply and sales persons must register under the IUSA as an agent for the Issuer.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Bitner', written in a cursive style.

Walt Bitner  
Securities Analyst

Attorneys

March 18, 2014

Securities Bureau  
Idaho Department of Finance  
PO Box 83520  
Boise, ID 83720

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2014 MAR 20 AM 11:02  
DEPT OF FINANCE

RE:

*Request for Interpretive Opinion/No-Action Position*

Dear Sir or Madam:

We are writing on behalf of \_\_\_\_\_ (the Company), an Idaho corporation, to request an interpretive opinion or no-action position from the Securities Bureau, Idaho Department of Finance. The specific issue to be addressed is the applicability of the agent registration exemption set forth in Idaho Code § 30-14-402(b)(3) to individuals employed by the Company and involved in representing the Company with respect to the offer and/or sale of its own securities. Please find enclosed a check for the \$50.00 mandatory filing fee.

### **Factual Background**

The Company was organized October 15, 2010 as a holding company. Its officers and directors organized a similar entity in Nebraska, \_\_\_\_\_ in 2003 for the purpose of establishing a holding company that would charter a life insurance company to serve the residents of Nebraska. They successfully created \_\_\_\_\_ in Nebraska in 2009 and determined to pursue the same strategy employed in Nebraska to establish an Idaho life insurance company to serve the residents of Idaho.

The Company retained employees to assist in promoting the concept of an Idaho based life insurance company. The group of employees involved included persons holding the following positions:

- Director of Marketing
- Marketing Specialist

In addition to those two specific positions, officers of the company were also involved in representing the Company and promoting the concept of an Idaho based life insurance company.

The marketing director is tasked with overseeing the efforts of the marketing specialists. The individuals holding marketing specialist positions are tasked with the following job responsibilities:

- Canvass county, state and regional areas for business development.
- Develop and cultivate leads for future life insurance company using the Company's marketing plan.
- Consistently meet or exceed Company performance objectives.
- Comply with all industry and corporate rules and regulations.
- Comply with all Company rules and regulations.
- Utilize data, market trends, and industry knowledge to develop and implement a personal business and marketing plan.
- Analyze, prepare and deliver presentations through the effective use of information, data and industry knowledge.
- If a party expresses an interest, present opportunity to purchase shares.
- Actively participate in on-going training as required by the Company.
- Maintain all documentation and data required by the Company.
- Attend area meetings and required training sessions.
- Actively recruit and seek talented individuals to join the Company team.

The marketing director and the marketing specialists are responsible to represent the Company with respect to any offers or sales of the Company's own securities and are specifically tasked with identifying and presenting information to qualified investors.

Neither the marketing director nor the marketing specialists are compensated by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. The marketing director receives a fixed salary of \$70,000/year and the marketing specialists receive a fixed salary of \$2,500/month. The marketing director is eligible for a small bonus of 0.5% of production if certain goals are met. The marketing specialists may be eligible for a bonus at the discretion of management based upon the amount of expenses incurred in representing the Company with respect to offers and sales of its securities and the duration of the offering. Both the marketing director and the marketing specialist are also entitled to reimbursement for work related travel expenses.

### **Analysis and Request for Opinion/No-Action Position**

Because the compensation of the marketing director and marketing specialists is a fixed salary with limited bonus opportunity and is not based upon commissions or other compensation based upon the transactions in the Company's securities, the Company requests:

- That the Department issue an interpretive opinion to the effect that the Company as well as the marketing director and marketing specialists may rely on the exemption set forth in Idaho Code § 30-14-402(b)(3), and that the marketing director and marketing specialists are not required to register as agents pursuant to the requirements of Idaho Code 30-140402(a); or
- In the alternative, that the Department provide the Company with assurance that it will not take enforcement action against the Company, the marketing director, or the marketing specialists in reliance upon the exemption set forth in Idaho Code § 30-14-402(b)(3).

Idaho Code § 30-14-402(b) provides:

The following individuals are exempt from the registration requirement of subsection (a) of this section: . . . (3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities[.]

The language is taken from the Uniform Securities Act and the official comment to that act provides that such an employee could receive a salary and benefits, including a performance related bonus, and still be within the exemption provided the agent's compensation is not dependent upon the securities transactions. This policy of allowing employees to be involved in representing an issuer with respect to an offer or sale of its securities is also articulated throughout the Securities Rules of the Idaho Department of Finance, IDAPA 12.01.08. Subsection 052 provides:

**Any individual not exempted pursuant to Sections 30-14-403(b)(3), (4) or (5), Idaho Code, must be registered as an issuer agent or comply with the registration requirement of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.**

It is only if compensation is commission based or in some other manner dependent upon the transactions in securities that an individual must register.

Because the marketing director and the marketing specialists are not paid commissions and are not otherwise compensated in a manner dependent upon transactions in securities, we believe they should be exempt from registration requirements pursuant to Idaho Code § 40-14-402(b)(3). Both the marketing director and the marketing specialists are compensated on a fixed salary to which they are entitled regardless of any transactions in securities. The only component of compensation that might be arguably linked to transactions in securities is the marketing directors bonus. As noted above, however, the official comments to the statute specifically contemplate performance-based bonuses.

Based on the foregoing, we respectfully request an interpretive opinion or a no-action position from your office to the effect that the Company and its marketing director and marketing specialists may rely on the exemption set forth in Idaho Code § 40-14-402(b)(3) as it relates to the participation of those individuals in representing the Company with respect to the offer or sale of its own securities.

In the event any member of your office requires additional information regarding this request, please do not hesitate to contact the undersigned.

**Sincerely,**

Enclosures as stated

cc: