

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
www.state.id.us/finance/dof.htm

May 10, 2001

Re: No Action Letter – Exemption from Broker-dealer State Registration

Dear M

This is in response to your letter to Nancy Ax of our Department concerning the above referenced request dealing with your firm's registration requirements with our state. Ms. Ax is currently out of the office for an extended period of time, therefore, I have reviewed your request in her absence.

As we understand it, (" ") does not have a place of business in Idaho and believes that its clients will come within the purview of Idaho's definition of an "institutional buyer", and as a consequence is exempted from the Idaho Securities Act ("Act") registration requirements pursuant to Section 30-1402(3).

While the Act does not formally define who qualifies as an institutional buyer under the above mentioned section of the Act, the Department has not been willing to accept IRS designation as a charitable organization as described in Section 501 (c) (3) of the Internal Revenue Code, as the investors referenced by this exclusion. Large, sophisticated institutions with professional management often will qualify, while smaller organizations will not.

However, we do note that you have attested in your correspondence that will limit offers to foundations and university endowments with minimum assets of \$100,000,000. Therefore, the Department is willing to recommend to the Director that the Department take no enforcement action with regard to registration if without becoming registered as a broker-dealer, sells its private placements in Idaho only to institutions with invest able assets of at least one hundred million dollars.

This no action position will not apply should any of the facts stated in your correspondence change or turn out not to be accurately represented.

If you have any questions or comments, please do not hesitate to contact the undersigned.

Sincerely,

Handwritten signature of William P. Blessing.
WILLIAM P. BLESSING
Securities Examiner

BB/kw

Banks & Savings Banks (208) 332-8005
Credit Unions (208) 332-8003
Securities (208) 332-8004
Money Transmitters (208) 332-8004

PHONE: (208) 332-8000
FAX: (208) 332-8098
Director's Fax: (208) 332-8097
Securities Fax: (208) 332-8099

Supporting Services (208) 332-8001
Mortgage Companies (208) 332-8002
Finance Companies (208) 332-8002
Collection Agencies (208) 332-8002

EQUAL OPPORTUNITY EMPLOYER

April 19, 2001

BY FACSIMILE AND U.S. MAIL

Ms. Nancy Ax
Securities Bureau, Department of Finance
State of Idaho
700 West State Street, 2nd Floor
Boise, ID 83720

RECEIVED
APR 24 2001
DEPARTMENT OF FINANCE

Re: No Action Letter – Exemption for Broker-dealer State Registration

Dear Madam:

This letter constitutes a request by _____ (hereafter “_____”) that your office issue a declaration of “no action” pursuant to the Idaho Securities Act (the “Act”) that _____, in its business practice as a third party marketing organization and its direct and exclusive dealings with and between the “*Issuer*” (defined herein below) of securities and institutional investors, is exempt from registration as a Broker-dealer in the State of Idaho pursuant to Section 30-1402 (3) (*Definition of a “Broker-dealer”*), Section 30-1402 (7) (*Definition of an “Issuer”*), Section 30-1406 (*Registration or Notice Filing Required of Broker-dealers, etc.*) and Section 30-1435 (*Exempt Transactions*) of the Act.

_____ represents that it was granted registration as a broker or dealer pursuant to Section 15 (b) of the Securities Exchange Act of 1934 effective February 22, 2001. In addition, _____ obtained membership to the National Association of Securities Dealers (“NASD”) effective February 22, 2001 and registration in the State of California where it is domiciled effective February 23, 2001.

is not a Broker-dealer by definition:

Section 30-1402 (3) of the Act defines “*Broker-dealer*” as:

“Any person engaged in the business of effecting transactions in securities for the account of others or for his own account. “Broker-dealer” does not include: (a) a salesman, issuer, bank, savings institution, trust company, credit union or insurance company; (b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for

themselves or as trustee; or (c) a person who has no place of business in this state if during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in subsection (3)(b) of this section."

represents that its sole office is located in the State of California where it is duly registered. represents that it does not have a place of business in the State of Idaho and that it is in the business of representing "Issuers," as defined in Section 30-1402 (7) for the purpose of soliciting investment monies for private placements exclusively from institutional investors. The scope of solicitation, offer and sale of securities encompasses entities that to the best of our knowledge are covered by the term "other financial institutions or institutional buyers," as stated in the citation above.

represents that its solicitation is limited to the following entities included in the definition of such "qualified institutional buyers," as set forth in Rule 144A of the Securities Act of 1933 (the "Securities Act"), which is consistent with the list of institutional investors previously cited in Section 30-1402 (3) of the Act:

- (a) Any bank as defined in section 3 (a) (2) of the Securities Act, any savings and loan association or other institution as referenced in section 3 (a) (5) (A) of the Securities Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers;
- (b) Any insurance company as defined in section 2 (13) of the Securities Act;
- (c) Any investment company registered under the Investment Company Act of 1940;
- (d) Any plan established and maintained by a state, its political subdivisions or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;
- (e) Any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;
- (f) Any trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in (d) or (e) above, except trust funds that include as participants individual retirement accounts or H.R. 10 plans.

Furthermore, represents that it may conduct transactions defined as “*sale, sell, offer or offer to sell*” in Section 30-1402 (10) of the Act with the following additional “*qualified institutional investors*” as set forth in Rule 144A of the Securities Act:

- (g) Any organization described in Section 501 (c) (3) of the Internal Revenue Code.

asserts that the entities included above would qualify as an institutional buyer by reasonable interpretation. Tax-exempt organizations as described in Section 501 (c) (3) of the Internal Revenue Code include corporations, and any community chest, fund, or foundation, organized exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition.

Within this category, transactions will be restricted to foundations and university endowments with minimum assets of \$100,000,000 or \$100MM (one hundred million dollars). Currently, the only organization domiciled in the State of Idaho is the University of Idaho (\$107MM).¹ Typically, larger endowments and foundations will have one or more internal portfolio manager(s) and formal investment committees whose responsibilities include investment research and investment manager review. These professionals are highly educated individuals and are knowledgeable about different investment products. Consequently, qualifies these entities to be institutional buyers.

exclusively participates in transactions that are exempt from registration:

Section 30-1435 (1) (h) of the Act states:

“Except as hereinafter in this section expressly provided, sections 30-1416 through 30-1433A, Idaho Code, shall not apply to...any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.”

attests that its business transactions will exclusively be limited to offers and sales to those entities enumerated above, which are either considered institutional buyers by the State of Idaho in Section 30-1435 (1) (h) or are reasonably interpreted to be institutional buyers.

¹ Assets are approximate figures as reported in Standard & Poor’s 2001 Money Market Directory.

Ms. Nancy Ax
April 19, 2001
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is lawful and acting in compliance as a person to offer or sell securities in the State of Idaho under this Act:

Section 30-1406 (1) of the Act states that:

"It is unlawful for any person to transact business in this state as a broker-dealer or salesman unless he is registered under this chapter, unlawful for any broker-dealer or issuer to employ a salesman unless the salesman is registered under this chapter."

By the fact that _____ exclusively participates in exempt transactions under Section 30-1435 (1) (h), and the fact that _____ is not a "Broker-dealer" by definition under Section 30-1402 (3), _____ is a lawful person to offer or sell securities in the State of Idaho.

is exempt from registration as a Broker-dealer in the State of Idaho under this Act:

Based on the foregoing and due to the specific nature of _____ business and the limited scope of the transactions exclusively between issuers and institutional investors, _____ is exempt from registration as a Broker-dealer in the State of Idaho and respectfully requests that a "no action" letter be issued accordingly.

Enclosed is a check in the amount of \$50.00 (fifty dollars) made out to the Department of Finance for your consideration of this no-action request.

Please acknowledge receipt of this letter and the enclosures by date stamping the enclosed copy of this letter and returning it to our office in the enclosed stamped self-addressed envelope.

Thank you for your attention to this matter. Questions may be directed to _____ or _____ at _____.

Respectfully,