



IDAHO

DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

March 19, 2012

Re: Request for Opinion Concerning Section 30-14-202(14) of the Idaho Uniform Securities Act

Dear

This is in response to your request for interpretation of Section 30-14-202(14) of the Idaho Uniform Securities Act (IUSA) which provides an exemption from registration for transactions involving ten or fewer purchasers. Specifically, your letter asks for guidance on our interpretation of the term "present" as it is used in this section and as it pertains to the offer and sale of securities in Idaho.

Section 30-14-202(14)(a) reflects a parameter for qualification under this exemption as "A sale or offer to sell securities of an issuer, if the transaction is part of a single issue in which a) Not more than ten (10) purchasers are present in this state during any twelve (12) consecutive months..." The term "present" for purposes of this exemption means that purchasers are either residents of Idaho or are within Idaho borders at the time the sale was made. This section does not require that all purchasers in the offering are required to be present in Idaho. "Sale" is defined under Section 30-14-102(26) of the IUSA as every contract of sale, contract to sell, or disposition of, a security or interest in a security for value". A sale is considered as such at the time when value is given for the security.

The reliance of upon this exemption in Idaho does not obviate the need to qualify the offering in other states in which it is offering and selling securities.

Please be aware that our foregoing opinion is based on the facts as you have presented them. Should those facts change or differ in any way from those presented, our opinion may also change.

Sincerely,

Patricia R. Highley
Senior Securities Analyst
Idaho Department of Finance

SECURITIES BUREAU
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Gavin M. Gee, Director of Finance
Idaho Department of Finance
800 Park Boulevard
Suite 200
P.O. Box 83720
Boise, ID 83720-0031

Re: Request for Exemption Confirmation and/or No-Action pursuant to
IUSA 14-202-14.

Dear IDOF:

We are writing on behalf of _____ formerly a Delaware corporation, currently in formation pursuant to Idaho Law, to request either confirmation of an exemption from securities registration and/or no-action relief with respect to compliance with the securities registration provisions under the Idaho Uniform Securities Act of 2004 ("Act"), in connection with proposed issuance/pledge of company stock related to acquiring start-up capital.

_____ has authorized this office to make on their behalf, the factual representations set forth in this letter.

Background

_____, founded in the latter portion of 2009, is an asset tracking and management business ("M2M") with both hardware and software components. The corporation was initially incorporated in Delaware and operated as a private Delaware corporation, with its principle place of business located in _____ until the end of 2011.

Although growth has been slow, _____ has begun to penetrate a number of market segments and now requires additional capital funding to expand its business. One of the two founders of _____ is a Washington resident and has reached out to a personal acquaintance, also a Washington resident, for possible capital funding in an amount of approximately One Million Dollars, to be paid over the next two to three years.

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The proposed investment will be memorialized through a stock purchase agreement between _____ and the investor.

Opinion Requested

By this letter _____ requests clarification and/or confirmation from the Securities Bureau Chief of the Idaho Department of Finance, based upon the authority granted under Idaho Code §30-14-605(d) (Rule 3) of the Act and the facts and circumstance described herein, of the availability of the exemption regarding registration, or that the Securities Bureau Chief will take a "no-action" position pursuant to Idaho Code §30-14-202(14) and §30-14-20.

Our reading of Idaho Code §30-14-202(14) is that _____ will be exempt from registration requirements so long as:

1. Less than 10 investors are issued or pledged stock in exchange for capital,
2. There is no general solicitation or advertising,
3. No commission or remuneration is received in connection with obtaining capital, and
4. The purchase of stock is for investment.

_____ would like clarification regarding the term "present" contained in §30-14-202(14)(a). Does this imply that the investor(s) must be present in the state for the exemption to apply, or that the investor(s) must be present in the state for execution of any stock agreement, or that the investor(s) must be residents of the State of Idaho. We note that §30-14-202(20) specifically draws a distinction between "present" and "resident". To that end we further seek clarification on the relationship between (14)(a) and (20). Our interpretation is that should (14)(a) be inapplicable to non-residents of Idaho, who purchase stock as part of raising capital, even if such agreement is executed while the non-resident is "present" in Idaho, _____ will be required to look to Washington's laws regarding securities registration.

We were unable to find any clarification in either case law or as a result of previous opinion / no-action letters issued by the Department. A portion of our analysis is based on jurisdictional attachment. It seems logical that should a non-resident of Idaho execute an agreement based on Idaho Law, with an Idaho company, whether present in the State or not, such an individual has

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availed himself of Idaho's laws and Idaho's jurisdiction. Should a stock purchase agreement be silent regarding jurisdiction but such individual executes that agreement while "present" in the State, he has again availed himself of Idaho's laws and jurisdiction, which we believe conform with Idaho's long arm statutes.

We do not believe it logical that Idaho would attempt to exercise jurisdiction over non-residences who neither execute an agreement within Idaho's borders, nor agree to Idaho's jurisdiction by contract. Further, it would seem logical that more often than not investors for Idaho start up entities will be non-Idaho residences and some form of securities protection from either Idaho or the resident jurisdiction will need to apply. Without such we believe that a significant flaw in the Act exists.

Based on the foregoing, respectfully requests confirmation that the above-described exemption from securities registration is available for the issuance of stock to non-resident investors as part of capital acquisition, or for clarification of those specific circumstances which would provide the requested exemption.

In accordance with this request, we have enclosed a check in the amount of \$50 representing the request filing fee. If you have any questions about this request or desire any additional information regarding matter discussed in this letter, please call the undersigned.

Sincerely,

Cc; Client (via email)