



State of Utah

DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

Protecting Investors; Promoting Commerce

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June 5, 2001

Mr. Budge Collins
Collins/Bay Island Securities LLC
840 Newport Center Drive
Newport Beach, CA 92660

Re: Collins/Bay Island Securities Exemption from Broker-Dealer State Registration
No-Action Letter
File # B00262834

Dear Mr. Collins:

In response to your May 1, 2001 letter, the Utah Division of Securities ("Division") has reviewed your request for a no-action letter pursuant to the authority granted by § 61-1-25 (5) of the Utah Uniform Securities Act ("Act") and § R164-25-5 of the Utah Administrative Code ("UAC"). In your request, you describe business conducted by Collins/Bay Island Securities ("Collins") and request that the Division find that the business conducted by Collins exempts them from licensing as a broker-dealer in Utah. Based upon the facts presented in your request, it appears that Collins is exempt from the definition of a broker-dealer and consequently exempt from licensing as a broker-dealer in Utah.

Section 61-1-13 (3) of that Act defines broker-dealer as "any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account." Section 61-1-13(3) goes on to list specific individuals and entities who are not included in the definition of broker-dealer. This includes "a person who has no place of business in this state if: (i) the person effects transactions in this state exclusively with or through: (A) the issuers of the securities involved in the transactions; (B) other broker-dealers' or (C) 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 action for themselves or as trustees."

Although "other financial institutions or institutional buyers" has not been defined in the Act or the UAC, it would appear that Collins' clients would be considered institutional buyers since

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solicitation will be restricted to foundations and university endowments with assets of at least one hundred million dollars (\$100,000,000).

Accordingly, the Division staff will not recommend any enforcement or administrative action should Collins limit its solicitation as described in your letter. This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the opinion of the Division staff on enforcement or administrative actions.

As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, this No-Action Letter does not absolve any party involved from complying with the anti-fraud provisions contained in § 61-1-1 of the Act.

Respectfully,

A handwritten signature in cursive script that reads "Paula W. Faerber".

Paula W. Faerber
Staff Attorney

COLLINS/BAY ISLAND SECURITIES LLC

May 1, 2001

BY FACSIMILE AND U.S. MAIL

Mr. Anthony Taggart
Director, Department of Commerce
Division of Securities
State of Utah
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

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

Dear Sir:

This letter constitutes a request by Collins/Bay Island Securities LLC (hereafter “Collins”) that your office issue a declaration of “no action” pursuant to the Utah Uniform Securities Act (the “Act”) that Collins, 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 Utah pursuant to Section 61-1-13 (3) (*Definition of a “Broker-dealer”*) and Section 61-1-14 (2) (h) (*Exemptions*) of the Act.

Collins 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, Collins 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.

Collins is not a Broker-dealer by definition:

Section 61-1-13 (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 or her own account. “Broker-dealer” does not include: (a) an agent; (b) an issuer; (c) a bank, savings institution, or trust company; (d) a person who has no place of business in this state if: (i) the person effects transactions in this state exclusively with or through: (A) the issuers of the securities involved in the transactions; (B) other broker-dealers; or (C) 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 trustees.”

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Collins represents that its sole office is located in the State of California where it is duly registered. Collins represents that it does not have a place of business in the State of Utah and that it is in the business of representing *Issuers*, as defined in Section 61-1-13 (17), for the purpose of soliciting investment monies for private placements exclusively from institutional investors. The scope of Collins' 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.

Collins 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"):

- (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, Collins represents that it may conduct transactions defined as "*sale or sell*," or "*offer or offer to sell*" in Section 61-1-13 (22) with the following additional "*qualified institutional buyers*" as set forth in Rule 144A of the Securities Act:

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

Collins 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, Collins' transactions will be restricted to foundations and university endowments with minimum assets of \$100,000,000 or \$100MM (one hundred million dollars). Such organizations domiciled in the State of Utah include:

The George S & Dolores Dore Eccles Foundation (\$612MM)¹
University of Utah (\$576MM)
Brigham Young University (\$408MM)

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 and experienced individuals and are knowledgeable about different investment products. Consequently, Collins qualifies these entities to be institutional buyers.

In an interpretive opinion dated November 1, 1995, the Commission opined on the definition and qualification of an institutional buyer. In the opinion, you wrote that the intent of the exemption provided under Section 61-1-14 (2) (h) is to cover sophisticated buyers in which the Commission would apply higher standards of "knowledge and experience related to the purchase of securities." Respectively, Collins' qualification standards implied above would be consistent with those the Commission. Collins' represent that its solicitation for investment in the types of products we will be offering, including but not limited to, hedge funds and emerging markets private equity, will be specifically limited to such institutional buyers.

Collins exclusively participates in transactions that are exempt from registration:

Section 61-1-14 (2) (h) of the Act states:

The following transactions are exempted from Sections 61-1-7- and 61-1-15: 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 investor, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity."

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

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Collins 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 Utah or are reasonably interpreted to be institutional buyers to be within the intent of the Act.

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

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

Enclosed is a check in the amount of \$120.00 (one hundred twenty dollars) made out to the State of Utah 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 Budge Collins or Katie Nguyen at 949.644.5771.

Respectfully,

Collins/Bay Island Securities LLC

By: 
Budge Collins, its President