



State of Utah
DEPARTMENT OF COMMERCE
Division of Securities

Norman H. Bangerter
Governor

David L. Buhler
Executive Director

John C. Baldwin
Director

160 East 300 South
P.O. Box 45802
Salt Lake City, Utah 84145-0802
(801) 533-6600

June 6, 1990

Heather A. King, Esq.
Womble Carlyle Sandridge & Rice
Post Office Drawer 84
Winston-Salem, North Carolina 27102

Re: Fayetteville Lithotripsy Biliary Ltd. Ptr. - Utah I
File # 9704-A06269-21
Request for Interpretive Opinion

Dear Ms. King:

This letter responds to your letter dated March 26, 1990, wherein you requested an interpretive opinion from the Utah Securities Division. Your request regards the applicability of Rule 177-10-2(f)(1)(A) to the offering of limited partnership interests ("Units") in Fayetteville Lithotripsy Biliary Ltd. Ptr. - Utah I, ("Partnership"), to Utah residents. The Division understands the relevant facts to be as follows:

The Partnership is a medical service limited partnership which intends to conduct gallstone lithotripsy services. Its proposed activities is contingent upon the approval by the Federal Food and Drug Administration ("FDA Approval") of a mobile Lithostar for gallstone lithotripsy which is manufactured by Siemens Medical Systems, Inc. The Partnership estimates that such approval will be granted, if at all, within the next 18 to 24 months. However, if approval has not been granted by the third anniversary of the close of the offering, the Partnership will be dissolved.

The Partnership intends to raise approximately \$300,000 to \$400,000 from public investors by offering its limited partnership interests in a modified "all or none" offering. It intends to register the offering with the State of Utah by qualification.

An, as yet, unspecified minimum number of Units must be sold to the public by a predetermined date. Once the minimum number of Units has been sold to the public the general

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partner of the Partnership and its affiliates may purchase any remaining Units on the same terms and conditions as the public investors.

The investors subscription to the offering will be evidenced by a noninterest-bearing, nonnegotiable promissory note a set number of days after receipt of the FDA Approval. If approval is not received by the third anniversary of the close of the offering, the Subscription Notes will be canceled and returned to the investors. Payment of the Subscription Notes is contingent upon a condition subsequent (FDA Approval) that is not certain to occur. Therefore, should the offering close before FDA Approval is granted, generally accepted accounting principles do not permit the company to reflect the value of the Subscription Notes as an asset on its financial statements.

On the basis of the foregoing facts and for the reasons stated below, it is the informal opinion of the Division that Rule 177-10-2(f)(1)(A) is applicable to the proposed offering. However, the proposed offering will be deemed to have satisfied Rule 177-10-2(f)(1)(A).

Paragraph (f)(1)(A) of Rule 177-10-2 sets forth the minimum offering amount for a development stage company so that at the close of the offering a company has at least \$ 75,000 of net tangible assets. This requirement seeks to improve a company's potential for success by providing a relatively substantial amount of initial working capital. As a result, the potential that investors may lose their investment in a "start-up" company is somewhat minimized.

Although the phrase "close of offering" has not been defined in Rule 177-10-2, the Division considers it to include that point in time at which the investors have satisfied the offering price by either contributing cash or unconditionally obligated themselves to pay cash. Usually this occurs simultaneous with the sale of all securities covered by the registration statement.

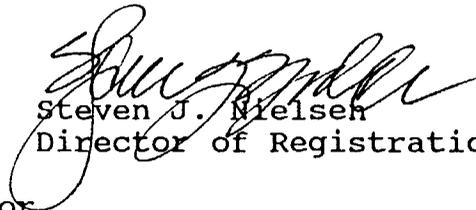
However, in the instant case, the point at which the investors unconditionally obligate themselves to pay cash may not occur, if ever, until after all securities covered by the registration statement have been sold. Once the condition is satisfied which renders the investor's obligation to pay cash unconditional, the company's financial statements will reflect net tangible assets in excess of the \$ 75,000 minimum.

Inasmuch as this opinion is based upon the facts noted above, please note that any different facts or conditions of a material

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nature might require a different interpretation. Furthermore this opinion relates only to the referenced transaction and shall have no binding effect on the Utah Securities Division or the Utah Securities Advisory Board with respect to future similar matters.

Sincerely,



Steven J. Nielsen
Director of Registration

cc: John C. Baldwin, Director
Utah Securities Division