

State of Utah

DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

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May 13, 1994

Mr. T. Deon Warner
Andrews & Kurth
Texas Commerce Tower
Houston, Texas 77002

Re: O&G Clearinghouse, Inc.

File #003-2850-35/A23830-35

Dear Mr. Warner:

This letter is in response to your letter dated April 29, 1994, requesting that the Division issue a no-action letter to the effect that the Division of Securities ("Division") will take no-action under § 61-1-7 and § 61-1-3 of the Utah Uniform Securities Act ("Act") for the offer and sale by auction of oil and gas properties.

So as to avoid unnecessary restatement or summarization of the facts set forth in your letter, the Division's response is attached to a photo copy of your letter.

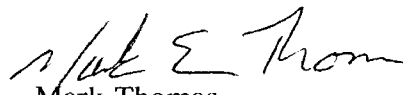
Based upon your factual representations and legal analysis, the Division will not recommend any enforcement action if the offer and sale of oil and gas properties are effected as described in your letter.

Because this no-action letter is based upon the representations made to the Division, it should be noted that any different facts or conditions of a material nature might require a different conclusion. Please note that this no-action letter relates only to the referenced sale by auction of oil and gas properties and shall have no value for future similar factual circumstances.

Very truly yours,

MARK J. GRIFFIN, DIRECTOR
UTAH DIVISION OF SECURITIES


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Assistant Director


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April 29, 1994

VIA FEDERAL EXPRESS

Utah Uniform Securities Act Sections 61-1-7 and 61-1-3

Mr. Mark Griffin
Utah Department of Commerce
Division of Securities
160 East 300 South
Salt Lake City, Utah 84111

Re: No Action position in connection with the offer and sale by auction of Oil & Gas Properties and No Action position regarding the marketing efforts of The Clearinghouse

Dear Mr. Griffin:

We represent The O&G Clearinghouse, Inc., a Texas corporation ("The Clearinghouse"), in connection with its role as marketer in the sale of various oil and gas properties by the owner thereof through auction. On behalf of The Clearinghouse, we are writing to request that the Utah Securities Department (the "Department") (i) advise us that it would not recommend that the enforcement division of the Department take any enforcement action under Section 61-1-7 of the Utah Uniform Securities Act (the "Act") for the offers and sales by auction of non-fractionalized, undivided, 100% interests in certain oil and gas properties (as described herein, the "Oil and Gas Properties") as described in this letter and (ii) advise us that it would not recommend that the enforcement division of the Department take any enforcement action under Section 61-1-3 if The Clearinghouse proceeds with facilitating the offer and sale to selected residents of Utah of Oil and Gas Properties as described in this letter without registering in the state as a broker dealer.

BACKGROUND

The Clearinghouse is a service provider which intends to offer marketing and selling assistance to oil and gas companies, independents and accredited individuals interested in buying and selling Oil and Gas Properties. In connection therewith, The Clearinghouse is licensed as a registered broker-dealer with the National Association of Securities Dealers, Inc. (the "NASD") and the Securities and Exchange Commission (the "SEC"). The Clearinghouse is also licensed as a broker-dealer in the State of Texas, where most, if not all, of the auctions will be conducted. The Clearinghouse plans to conduct closed auctions as frequently as demanded by the market for Oil and Gas Properties. The auctions will be held either for a single seller and its related entities or on consignment sale on behalf of many different and unrelated sellers (the "Sellers").

The following outline describes (i) the Oil and Gas Properties to be auctioned, (ii) the marketing and selling efforts of The Clearinghouse, (iii) the qualification process of brochure recipients and potential buyers, and (iv) the process of closing sales.

1. Oil and Gas Properties to be Auctioned. In accordance with an Agreement for Sale of Oil and Gas Properties (see Attachment "1") to be entered into between the Seller and the Clearinghouse, all Oil and Gas Properties offered for sale will have the following characteristics:

- 1.1 All properties will be made up of working interests, carried working interests, overriding royalty interests, royalty interests, mineral interests and future interests in (i) drilled and undrilled properties, (ii) producing, nonproducing and shut-in properties, and (iii) properties which are fully developed, partially developed and totally undeveloped.
- 1.2 All properties shall consist of 100% of the Seller's interest therein on a non-fractionalized basis and will be sold without warranty of any kind, express or implied, on an "as is, where is" basis. Seller may, however, retain or reserve interests in shallow, deep or intermediate horizons or overriding royalty interests.
- 1.3 Each of the Oil and Gas Properties will be offered pursuant to (i) any and all leases and agreements to which the property is subject at the time of the sale, including without limitation, letter agreements, farmout agreements, joint venture agreements, operating agreements, gas balancing agreements, production purchase agreements, advance payment agreements, assignments or other documents affecting the property and (ii) any existing royalties,

overriding royalties or other burdens on production existing at the time of the sale.

- 1.4 Each of the Oil and Gas Properties will be offered with a representation from the Seller that there are no contractual obligations or specific provisions to which the property is subject which would not be considered customary to the industry or that would inordinately inhibit future control of the property by the buyer.
- 1.5 Each of the Oil and Gas Properties will be offered with the provision that the buyer of the interest has sixty (60) days following recordation of the conveyancing document(s) to identify any material title defects and notify the selling entity thereof in writing. The Seller, in turn, has thirty (30) days thereafter to either: (a) cure such defect to the satisfaction of the buyer, or (b) make a full or proportional refund of the purchase price.
- 1.6 Each of the Oil and Gas Properties will be sold to only one institutional or accredited purchaser ("Buyer") per property, however, there may be as many as one hundred or more successful Buyers at any one sale.
- 1.7 Each of the Oil and Gas Properties will be offered without undue emphasis on undeveloped potential such as undrilled locations, behind pipe potential or other development potential for the future.
- 1.8 The following information generally is provided (subject to the purchaser's verification) by the Seller with respect to each property:
 - (i) location;
 - (ii) well name;
 - (iii) size and type of interest offered;
 - (iv) oil production per day;
 - (v) gas production per day;
 - (vi) name of the operator; and
 - (vii) name of the Seller.

Certain additional information provided by the Seller concerning cash flow and production history generally is available to prospective

purchasers at the Clearinghouse's offices with respect to most of the properties and will be mailed to prospective purchases upon request for a nominal fee and postage, however, the Clearinghouse will not have independently verified such information.

2. Marketing and Selling Efforts of the Clearinghouse. The Clearinghouse serves a facilitator role in conjunction with the sale and purchase of the properties offered. At no time does The Clearinghouse take title to the properties. Services provided to both Sellers and potential Buyers are generally described as follows:

- 2.1 The Clearinghouse receives information and historical data prepared by Sellers concerning the property and the interest offered for sale. Such information is generally furnished by the Seller on the form attached as Exhibit "A-1" to Attachment "1" hereto and may include information such as the name and location of the well being sold, the amount and type of interest being offered, oil and/or gas production calculated on a daily basis and the names of the operator and the Seller. Additional data such as production history, expense history, cash flows and equipment inventories may also accompany the property data sheets which are prepared.
- 2.2 The Clearinghouse then assembles the basic data for each property being sold and compiles same into a Sale Brochure (see Attachment "2" hereto) which is mailed to approximately 16,000 prospective Buyers;
- 2.3 The Clearinghouse designs and arranges for the publication of Notices of Selective Offering (see Attachment "3" hereto) in oil and gas industry trade journals only. No advertisements or notices of the sale are publicized in newspapers or other publications which are circulated to the general public. The offering is limited exclusively to members of the oil and gas industry.
- 2.4 The Clearinghouse arranges for or handles the mailing, shipping or faxing of well data packages prepared by Seller to prospective Buyers upon receipt of a data request and an Application for Bidder Registration (see pages 16 and 17 of Attachment "4" hereto). Data packages are furnished for the cost of shipping or postage, plus a modest handling and reproduction fee. Sales taxes are collected where applicable.
- 2.5 The Clearinghouse reminds prospective Buyers on an ongoing basis of the importance and necessity of conducting a thorough due diligence review of the properties to verify the information furnished

by the Seller (see page 14 - "Do your Diligence", page 18 - "Information Sources" contained in Attachment "2" hereto).

- 2.6 The Clearinghouse coordinates and holds the actual sale in a high quality hotel ballroom attended by hundreds of prospective purchasers ("Buyers").
- 2.7 The Clearinghouse is partially reimbursed for the expense of the printing, handling and mailing of the Sale Brochure and the printing of an auction day catalog; the cost of facility and equipment rental; refreshments and the Notice of Sale publications in accordance with paragraph 7 and Exhibit "C" to Attachment "1" hereto. Such promotional reimbursements generally range from \$40,000 to \$50,000 and are proportionately borne by the Sellers based on their net sale proceeds as it relates to the gross proceeds received by all Sellers.
- 2.8 The Clearinghouse sells all properties at the drop of the gavel in accordance with applicable state auction rules and regulations.
- 2.9 Once sold, The Clearinghouse closes the transaction by accepting personal, company or cashiers checks and wire transfers made payable to a designated independent bank acting as escrow agent. Funds are never commingled with The Clearinghouse's funds, and are held in a separate account for each sale.
- 2.10 At such time as a Buyer's check has cleared in payment of a property, The Clearinghouse or, in some occasions, the Seller will file the conveyancing documents or a notice thereof for public record on behalf of both the Buyer and Seller. Once returned, the recorded document(s) are forwarded to the Buyer for completion of their records and, if requested, a copy of such document(s) will be sent to the Seller. A nonrefundable handling charge is made to the Buyer for the recording of such documents.
- 2.11 Settlement with the Seller occurs within twenty (20) banking days following the sale, except as to properties which are subject to preferential rights to purchase held by third parties, obligations to obtain consents prior to assignment and state/federal regulatory or other approvals.
- 2.12 In addition to the promotional expense reimbursements to which The Clearinghouse is entitled pursuant to paragraph 7 and Exhibit "C" to Attachment "1" hereto, The Clearinghouse is entitled to a commission payable pursuant to paragraph 8 and Exhibit "D" to Attachment "1" hereto. Such commissions are calculated on the

gross proceeds of the sale at the time of the sale and are deductible prior to settlement from a Seller's gross proceeds.

3. Qualification of Brochure Recipients and Potential Buyers.

Prior to being added to The Clearinghouse's mailing list, it is necessary to complete a Sale Brochure Application and Acquisition Profile (see Attachment "5" hereto) to confirm that the prospective recipient of the mailing is engaged in the oil and gas business on an ongoing basis and/or that such person or entity is an "accredited investor" pursuant to Regulation D of the Securities and Exchange Act of 1934, as amended.

Prior to becoming a registered bidder at a sale, the potential Buyer must also execute the Bidder Application and Qualification Statement (see Attachment "5" hereto) whereby, among numerous other pertinent representations:

3.1 The potential Buyer represents that it:

- a. currently explores for and/or produces oil and gas, and is an operator of 25 or more oil and/or gas wells.
- b.(1) derives gross revenues in the amount of \$500,000 or more annually from exploration and/or the production of oil and/or gas; and derives at least 75% of its annual gross revenues from exploration for and/or the production of oil and gas; or
- b.(2) has been engaged in the business of exploring for or producing oil and gas or other valuable minerals on an ongoing basis for a minimum of 5 years and, during such time period and currently, has derived a minimum of 51% of its annual gross revenues from such business.
- c. will purchase the Oil and Gas Properties for investment and not with the intent of resale.

3.2 Additionally, the registering bidder must indicate its background or profession either as a petroleum engineer, petroleum landman, petroleum geologist, oil and gas producer, oil and gas investment agent or broker for others, oil and gas attorney or other accredited profession.

3.3 The Clearinghouse relies upon the representations and warranties contained in the Buyer Terms and Conditions of Purchase and the Bidder Application and Qualification Statement in determining the accreditation of a potential bidder. It is possible that based on certain facts and/or situations surrounding a particular prospective bidder's engagement in the oil and gas business and the applicable

states' securities laws, The Clearinghouse may deem it appropriate to approve a party or entity despite his/it's failure to meet all of the tests described in the Bidder Application and Qualification Statement. However, all parties must be "accredited investors" as such term is defined in their respective states.

- 3.4 Should the applicant be determined by The Clearinghouse to be knowledgeable, qualified and capable pursuant to the representations made on the Bidder Application and Qualification Statement, the applicant may then be approved and registered as a bidder. At or before the time of registration for a sale, the bidder will be required to execute the Qualified Bidder Registration form and the Buyers Terms and Conditions of Purchase (see Attachment "6").
- 3.5 The bidder registration procedures which have been established by The Clearinghouse are designed to exclude passive investors who rely on third parties to produce profits, manage or recommend properties to create profits.
- 3.6 The Buyers Terms and Conditions of Purchase specifically provides, among other items, that:
 - a. The Buyer is responsible for conducting it's own due diligence review of the properties.
 - b. The Buyer must comply with all agreements and regulations to which the property is subject.
 - c. All properties are sold "as is, where is" without warranty of any kind, express or implied.
 - d. The Buyer is not purchasing the property with the intent to resell, unless the Buyer was forced to acquire the interest as a part of a larger package of properties in order to obtain other properties also included in such package.

4. **Closing Sales.** As to Oil and Gas Properties sold by the oral bid auction, the following conditions generally describe the process associated with all sales:

- 4.1 Individual properties, or groups of properties sold as a single "lot", are typically offered on an "absolute" basis (not subject to a minimum price requirement) for prices as low as \$50.00 and as high as several million dollars. On occasion, properties may be sold

Mark Griffin
Division of Securities
April 29, 1994

subject to a minimum acceptable price and in such cases are clearly marked as such.

- 4.2 A single auction typically will generate from \$1,000,000 to as much as \$20,000,000 in total receipts. The auctions may be conducted at various locations in the United States, but are planned to be held primarily in Houston, Texas.
- 4.3 Bids for Oil and Gas Properties are made in person on an oral basis as typical with an auction, however, on occasion a bidder may submit a written bid in lieu of physically attending the sale. In such cases, the bidder will be required to deliver the bid prior to the start of the auction accompanied by a bank letter guaranteeing funds equal to the amount of the written bid. At such time as the property or lot is offered at the auction, the auctioneer will open the sealed bid and announce the amount thereof as appropriate.

In support of the matters discussed herein, enclosed are the following attachments:

- | | |
|------------------|---|
| Attachment "1" - | Agreement for the Sale of Oil and Gas Properties between The Clearinghouse and the Seller |
| Attachment "2" - | Sale Brochure |
| Attachment "3" - | Sample Notice of Selective Offering |
| Attachment "4" - | Sale Brochure Application and Acquisition Profile |
| Attachment "5" - | Bidder Application and Qualification Statement |
| Attachment "6" - | Buyer's Terms and Conditions of Purchase |

LEGAL DISCUSSION

On behalf of The Clearinghouse, we request the Department advise us that it would not recommend that the enforcement division of the Department take any enforcement action under Section 61-1-7 of the Act for the offer and sale by auction of the Oil and Gas Properties. We also request that the Department advise us that it would not recommend any enforcement action under Section 61-1-3 if The

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Clearinghouse proceeds with facilitating the offer and sale to selected residents of the state of Utah without registration in the state as a broker-dealer.

No Action Request - Offer and Sale of Securities. The preamble to the Act states that the Act shall be construed to protect the investor and the public interest, to promote uniformity and to encourage and promote capital investment. With regard to protection of investors, we believe that the manner of proposed auction sales of Oil and Gas properties solely to accredited and sophisticated individuals and institutions in the oil and gas industry by The Clearinghouse serves the public interest of corporate and individual residents of Utah in having available avenues to economically dispose of and purchase oil and gas assets.

The auction of oil and gas assets encourages and facilitates capital investment in Utah by providing a manner in which sophisticated oil and gas owners and operators in Utah can economically invest in acquiring oil and gas assets. As a result of the potential number of auctions being one or two a month and the number of properties offered by hundreds of Sellers, registration of each offering would not be practical. In addition, the benefits to the industry and to the public outweigh the need for registration.

No Action Request - Marketing Efforts. Our interpretation of Section 61-1-3 of the Act is that under the proposed auction scenario, The Clearinghouse would be required to register as a broker-dealer in the state of Utah. Given that The Clearinghouse will make contact in Utah solely through (i) the mailing of brochures to a current list of accredited and sophisticated individuals and institutions who are in the oil and gas industry and (ii) the publishing of information in oil and gas trade journals, and that each potential bidder must individually qualify to be able to bid on Oil and Gas Properties, we submit that the interest of the public in Utah would not be negatively affected if The Clearinghouse was allowed to proceed without registration under Section 61-1-3 of the Act.

Finally, we believe that auction sales of Oil and Gas Properties provide a valuable service to the oil and gas industry in your state and in the industry as a whole. In addition, an exemption from registration of the offers and sales in the auction would better serve the dual purposes of the Act - protection of the public and promotion of capital formation - than would registration.

CONCLUSION

The sale of oil and gas properties has emerged over the last few years as an efficient and effective means of divesting of oil and gas properties. Auction divestitures have proven to be a very valuable service to both Sellers and Buyers. The Clearinghouse believes that our registration requirements will impose adequate suitability standards to ensure that potential Buyers are knowledgeable and sophisticated purchasers engaged in the oil and gas business on an ongoing basis, and

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Division of Securities
April 29, 1994

have adequate financial resources to bear the risks inherent in the purchase of Oil and Gas Properties. As a result of the potential number of auctions being one or two a month and the number of properties being offered by hundreds of different Sellers, registration of each offering would not be practical.

With regard to the facts and circumstances surrounding the sale of the Oil and Gas Properties as discussed above, we respectfully request that the Department advise us that it would not recommend that the enforcement division of the Department take any enforcement action under Section 61-1-7 of the Act for the offers and sales by auction of Oil and Gas Properties in the manner set forth above and with the following additional conditions:

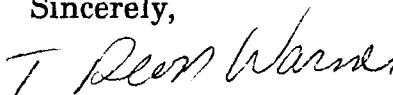
- a. The seller did not acquire the interest with a view to resale;
- b. The seller has sole ownership of the property, has the full right and authority to sell the property, and is selling 100% of its interest in each property;
- c. The property or interest offered or sold does not constitute an investment contract; and
- d. The purchaser is engaged in the business of exploring for or producing oil and gas as an ongoing business, and the purchaser has sufficient financial resources to enable him to bear the risk of loss attendant to the purchase of the property.

In addition, we respectfully request that the Department advise us that it would not recommend that the enforcement division of the Department take any enforcement action under Section 61-1-3 if The Clearinghouse proceeds with facilitating the offer and sale to selected residents of Utah without registering in the state as a broker-dealer.

If you determine that you are unable to render the requested Transactional exemption or no action advice, we would appreciate the opportunity to discuss our request with the Staff prior to the issuance of a written reply to this letter.

A filing fee in the amount of \$120.00 is enclosed. Please call me at (713) 220-4068 if you have any questions.

Sincerely,


T. Deon Warner

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